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Establishing A Child Care Facility

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For information regarding Establishing A Child Care Facility, please contact:

Thelma B. Carter
IRS National Child Care
Program Manager
FTS-376-0082

Debra Kolodny
NTEU Director for Cooperative
Efforts
202/785-4411

CHILD CARE IN THE INTERNAL REVENUE SERVICE

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JOINT STATEMENT OF COMMITMENT

The Internal Revenue Service and the National Treasury Employees Union recognize the need of Service employees and potential employees for child care services, the benefits to both the employer and the employee of child care services, and the importance of planning for an efficient and effective child care program.

Our goal is to provide on-site or nearby child care centers wherever sufficient employee interest and necessary space exist to do so.

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I. OVERVIEW

A. Introduction

Family concerns are emerging as a potent force in the American workplace. Rapid changes in the labor force have required an increasing employer awareness of family concerns affecting workers. The faster growing segment of the labor force is the category of mothers of young children. The workforce is also increasingly comprised of single parents and married parents who both work.

Both government and private sector employers are increasingly active in encouraging quality child care services outside the home. Personnel policies are, by necessity, being reshaped outside to permit a realistic combination of job and family responsibilities.

B. Background

In 1983, NTEU came to the national bargaining table proposing that the IRS establish child care centers. IRS responded that the agency had a strong interest in pursuing this goal and urged that negotiations on subject be postponed until studies regarding child care already underway in the IRS were complete.

In 1984, Commissioner Egger approved the Internal Revenue Service Strategic Plan which contains a number of strategic initiatives. These initiatives focus on areas of concern to the Service at the present as well as providing a strong foundation for directing tax administration efforts well into the 21st Century.

One of these initiatives related to child care programs and was one of fifteen devoted to "Enhancing Recruitment and Retention of Employees," referred to as "ERR" initiatives. This specific initiative, ERR-3, "Treatment of all Employees, Child Care," established a study group to investigate a method of assessing the need for, and enhancing child care availability for IRS employees. This study group was specifically charged with the responsibility for identifying child care alternatives that are available to the Service, recommending alternatives and roles the Service should adopt, and proposing policies, tests, pilots, etc.

C. Methodology

In order to determine the extent and nature of day care availability in the marketplace, visits were made to numerous child care facilities to talk with those involved in organizing and administering them. These facilities were in various parts of the country. Some were employer-sponsored while

others were completely privately operated. Teams of at least two study group members visited each child care facility. In addition, several visits were made to resource organizations to gather information and obtain resource data. As a result of this research, the group compiled an extensive library of information regarding the entire area of child care.

To accomplish the objectives of the study group, a questionnaire was developed to survey the needs of our employees for child care. The questionnaire itself, as well as the survey method and locations, were negotiated with National NTEU. Thereafter, with Union concurrence, fifteen thousand employees at twelve diversely located and various sized IRS locations were surveyed.

As a result of legal questions raised during the course of the study, the advice of the Office of Chief Counsel was obtained. Advice was obtained regarding three different areas, the resolution of which was necessary to formulate a comprehensive policy concerning child care. The first legal issue related to whether appropriated funds can rightfully be used for child care services. The second legal question focused on the legal liability that can arise from Service involvement in providing child care services. The third issue related to the tax-exempt status available to a non-profit corporation established for the purpose of providing child care.

Satisfactory responses were received from General Legal Services which allowed the study group to proceed with the development of recommendations for the implementation of child care without concern for legal roadblocks.

The following is a list of specific substantive areas of research conducted by the group. Background papers for each of these areas are included in the Study Group's report: Child Care for the Internal Revenue Service - Findings and Recommendations of the Child Care Study Group. A copy of the Study Report is available from the Counseling, Health and Safety Section in the IRS Human Resources Division.

- Day-care in the workplace
- Alternative methods
- Funding and cost analysis
- Legal issues
- Needs assessment/questionnaire
- Regulatory compliance

II. EXECUTIVE SUMMARY

Both government agencies and private firms which have implemented child care programs have found that they are successful in terms of employee recruitment, retention, morale, absenteeism and productivity. The results of the survey made of IRS employees show conclusively that there is widespread interest in and need for child care services in IRS Offices.

Of the 10,000 (IRS/NTEU) employees who responded to the survey, 46% indicated interest in an IRS-sponsored child care facility located at the place of work. That projects to over 41,000 employees and encompasses a potential 50,000 children.

Child care services of any type costs money to initiate and sustain. Financial support will have to come from a number of sources. Parent fees will provide most of the on-going funding once a child care program is in place; however, start-up costs and certain large-dollar expenses, such as construction and rent, will need to be provided by the Service and the General Services Administration.

The question of whether appropriated funds could be used to fund day care centers was presented to General Legal Services. They responded positively, stating in essence that appropriated funds may be used for such a purpose subject to the Commissioner's determination that such expenses are "... so inter-related to the recruiting, retaining and/or productivity of (IRS) employees that it (is) necessary for the efficient operation of (the) agency ...."

Furthermore, since the completion of the Study Group's report, the Congress has passed legislation allowing federal agencies to provide rent-free space for the purpose of child care programs (40 U.S.C. 490b).

On the question of the liability of the Service in providing child care services to employees, General Legal Services responded that some risk of liability is present in any form of child care; however, it can be minimized by structuring the program in a manner that reduces potential liability. GLS also reiterated that federal employees acting within the scope of their jobs are not held personally liable for their actions except through negligence. Furthermore, federal officials cannot be held liable for the wrongful actions of their subordinates. Organizational liability for injury to employees' children, while existent, has not deterred government agencies and private firms from implementing effective programs.

In the case of IRS child care programs, liability will be the responsibility of the tax-exempt organizations established to operate the center. These centers will not be operated by the Service.

IRS and NTEU have concluded that it would be sound institutional policy for the IRS to encourage and provide child care services at all locations where there is an identified need. We have also concluded that:

- child care centers are feasible in service centers and offices where there is sufficient demand;

- the complexity of designing and implementing child care centers indicates the necessity of employing child care consultants in setting up pilot programs and implementing permanent ones;

- the ability of the Service to provide in-kind services -- such as space, maintenance, printing, administrative oversight, utilities, staff-time, etc. -- for child care programs will make those programs more affordable for Service employees, particularly those in the lower-grades;

- an employer-owned and operated child care center is not a feasible alternative for the Service because there is no authority for federal agencies to use appropriated funds to operate child care centers, and because of the cost and limited usefulness for all employees;

- the type of child care program offered in each office will depend on the characteristics and demand for such a program in that office; however, IRS and NTEU have adopted minimum program requirements which are outlined in this Model Program document and these are to be followed in all child care programs where IRS participates;

- the key to the success of child care programs is the degree of top level management and NTEU support at the National Office, regional and local levels;

- if an office relocates to another building or if space becomes available in the same building establishing a child care center should be made a priority if employee interest is available.

III. DAY CARE'S ROLE IN THE WORKPLACE

The increasing number of female workers and single parents in the labor force has caused employers to consider child care services as a new employee benefit. Research data indicates that child care program benefits outweigh the associated costs. These benefits include 1) higher recruitment results, 2) increases in retention rates, 3) declines in absenteeism, 4) increased productivity, 5) improved employee morale and job satisfaction, 6) equal employment opportunity enhancement, 7) positive public relations, and other observable benefits.

A. Workforce Demographics

Current:

As of March 1984, 19.5 million women with children under 18 years old were in the labor force. Eight million of these women have children who are under age six and the participation rate of mothers with children 3 years old and younger is 60 percent. According to the Office of Employment and Unemployment Statistics, there has been a 20 percent increase in mothers' participation in the labor force since 1970. It is evident that mothers today do not leave the job market after childbirth. Despite this revolutionary increase in the number of women in the labor force, there has been no corresponding increase in the amount of available child care services for the employee.

Projections:

By the year 2000, women are expected to participate in the labor force in the same percentage as men. Ninety percent of these women will be of child bearing age. Sixty percent of these women will probably be working mothers. High divorce rates continue and the number of single working parents increases. During the 1980's, the number of births is expected to rise to a level almost as high as that of the baby boom in the late 1950's. By the year 2000, there are expected to be 23 million children under the age of 6. Projected community and private child care facilities will not be able to handle the demand.

B. Benefits of Employer-supported Day Care

Recruitment:

One of the major impacts of providing child care services is the benefits realized in the recruitment area. Statistical sampling of companies resulted in the following information:

- 85 percent reported that child care had a positive effect on recruitment.

- 73 percent considered child care more effective than half of the other recruitment incentives they use.

- 32 percent considered child care more effective than 3/4 of the other recruitment incentives they use.

The quality of the applicant pool increases since more people are attracted to employers providing child care services. Employers providing child care services have less difficulty filling traditionally hard to fill jobs. Potential employees perceive child care benefits as additional compensation. Wives are more likely to enter the workforce when the second income results in a net gain after the cost of child care is substracted.

Overall, those employers providing child care services are more attractive to potential employee and are more attractive to potential applicants than competing employers who do not provide this service.

Retention:

Employee retention rates are lowered when:

- employees are affected by the balancing of problematic multiple responsibilities;

- opportunities requiring availability for special assignment/projects, overtime, etc., are missed;

- parents are not satisfied with the quality of care available to them; and

- employees are terminated due to excessive absences from work.

These instances lower the retention rate as well as create stress for those employees remaining on the job that must carry the additional workload. Many IRS employees face an additional dilemma caused by lack of child care facilities open early or late enough to accommodate their schedules. A well-designed child care program can solve some child-related problems, reduce the cost of care to parents, and provide more flexibility to the parents' work schedule. Consequently, the employer experiences a higher retention rate.

Absenteeism:

Child care difficulties are considered the fourth largest cause of absenteeism. Of firms surveyed in 1982 by the National Employer-supported Child Care Project, 53 percent reported lower absentee rates, resulting in substantial dollar savings associated with various administrative support functions, especially training needs. Parents who are provided on-site child care services can make better judgments regarding absences from work due to child care issues. The employees whose absenteeism may be reduced by child care will be those who need or use child care either regularly or the emergencies.

Increased Productivity:

The National Employer-supported Child Care Project surveyed 415 companies with child care services in 1982. Forty-nine percent of these companies reported that child care services enhanced productivity rates and increased the overall efficiency of their organizations. These companies made the following observations regarding child care and its impact on productivity factors:

- reduction in the amount of employee "time off" to resolve child emergencies;

- reduction in lost production time when parents need to make telephone calls to children;

- increase in the employee's ability to concentrate on job tasks rather than on the frustration of inadequate child care arrangements;

- increase in employee morale by offering an additional job benefit;

- reduction in production lag time due to absenteeism and turnover;

- attraction of quality job applicants; and

- minimization of the amount of overtime used.

Morale and Job Satisfaction:

Employers feel that providing child care services has a positive effect on the morale of employees. Employees display a higher sense of satisfaction in the quality of their work life. They feel that their children have a bigger "extended family" and that the employer is supportive of a family atmosphere. Parents are provided a continual opportunity to strengthen their bonds with their children.

Equal Employment Opportunity:

Child care services provide a practical service that has the potential to benefit a large group of employees and potential employees. Child care services accomplish several desirable objectives for affirmative action. They are as follows:

- an increase in promotion opportunities for employees by conversion from part-time to full-time employment status, retention of employees long enough to upgrade their skills level, and provision of after-hours training programs for self-development;

- the labor market becomes accessible to workers who are not working at all or working part-time because of difficulties with child care;

- provide a more flexible work schedule for potential employees who may have conflicting personal schedules; and

- attract affirmative action target groups.

Public Relations:

Child care programs have a positive effect on the employer's image and attracts positive publicity in magazines, newspapers, and other public media. This positive publicity will be valuable as an enhancement technique to promote the attractiveness of the IRS as a place to work.

IV. GETTING STARTED

A. Immediate Action

Starting a child care center involves hard work and careful planning. Once a decision has been made to have an on-site child care center, contact should be made with the local GSA office. To acquire the necessary space for the center, a Request for Space (SF81) should be submitted to the GSA. A list of local GSA Child Care Representatives is attached as Exhibit A.

Every attempt should be made to identify space in the buildings where our employees work. However, if space is unavailable in those buildings, GSA should be requested to seek leased space nearby. Keep in mind that appropriate outdoor space is usually a local licensing requirement. As plans are made for relocation of employees to new buildings, space for child care centers should be considered from the start of planning for the new space design.

B. Needs Assessment/Questionnaire

The needs assessment process is designed to demonstrate to parents and to the Service the problems caused by family demands on working parents and to suggest appropriate employer actions to lessen or solve the problems. The problems encountered by parents in locating child care facilities are already recognized and well documented. Some of the appropriate actions have already been discussed in the Study Group's Report.

Some programs, such as information and referral services, can be made available to employees at all locations with little effort or cost. Those that require a significant investment, however, must be based on a careful analysis of need and feasibility.

Most corporations and consultants included in the Study Group's research recommended an employee survey to evaluate the need and desire for child care services. Two prime objectives would be met by the survey: (1) to measure the level of interest in child care services and, (2) assuming there is sufficient interest, to provide statistics on potential population size, make-up of the population and program/benefits to be offered.

An IRS/NTEU questionnaire should be utilized to determine the need for, and interest in, a child care facility located at the employee's place of work. Data collected by way of this questionnaire should be current; thus, the survey should take place as close as possible to the time that actual program development begins. The form should provide three groupings of data: work-related information (grade, working hours, etc.), current child care information (number of children, how cared for, etc.) and potential use of an on-site facility (hours of use, number of children to enroll, etc.) (see Exhibit B).

C. Funding

Any project in support of child care will cost money to initiate and sustain, and this financial support will have to come from a number of sources. Parent fees will, of course, provide most of the ongoing funding once a program is in place. However, start-up costs will need to be funded in other ways. Also, due to the high cost of some programs (i.e., on-site child care centers), various methods of lessening the burden on parent fees are essential.

IRS Subsidy:

The IRS may use its appropriated funds to provide certain limited day care services for its employees. IRS is legally authorized to provide funding support in the following areas:

Start-up Costs - According to the GSA Office of Child Care, costs for renovation will be provided by the GSA. Purchase of equipment, limited initial operating funds to defray expenses until parent fees are collected, and fees for consulting services will be provided by the IRS (see GSA Memorandum dated December 2, 1988, Exhibit C).

Operating Expenses - Rent-free use of space, utilities, maintenance. Immediately prior to opening of a center, appropriated funds may be used to pay the salaries of the director and staff - but only until the center is operational with funds coming in from parent fees. (Exhibit D.)

GSA - Construction/Renovation:

The GSA is responsible for providing all or a part of the up-front construction/renovation costs at the IRS facilities. GSA, however, will recover the cost from the IRS through the cost of rental space over a period of time. Clarification of this commitment should be sought by contacting the local GSA child care representative (Exhibit A).

Parent Fees:

Parent fees will provide the majority of needed funds for the operation of a day care center on an ongoing basis. However, due to the high cost of providing day care, the necessary fees may be unaffordable to low graded employees. There are a number of options available. These options will vary from state to state. Sliding scales for lower grades can be a consideration. (SPECIAL NOTE: The goals of the IRS/NTEU Child Care Program is to offer quality and affordable child care services to IRS employees. These dual objectives must be kept in mind when decisions are made regarding budgetary decisions, especially those decisions relating to fees and staffing ratios.)

Outside Funding:

Child care programs may solicit funding from a variety of sources. These sources can include both government and private organizations.

Most government funding is restricted to services which provide for low income persons. The Federal government provides funding for day care services under Title XX of the Social Security Act, the Aid to Families with Dependent Children Program Act, and the Work Incentive Program. The local Welfare Department or Department of Social Services usually determines the eligibility of child care programs for these benefits. The Child Care Food Program, administered by the USDA, provides reimbursement for nutritious meals that are served to children in child care centers. To be eligible for funding, a child care center must have Federal tax exemption or be receiving funding under Title XX. This benefit is available to all children, with higher rates of reimbursement for children of low income families.

There are many private foundations and charitable organizations that provide support to child care programs. Foundations frequently fund demonstration projects but do not normally provide ongoing support. Certain day care programs may qualify as recipients of charitable contributions from organizations such as the United Way (CFC). In addition to CFC, other options should be considered, including fund raisers, flea markets, bake sales, and puppet shows. These local fund raising efforts can be critical in terms to reducing the cost to parents over the long run and can assist in meeting start-up cost requirements.

In some states, centers can access money from the departments of Education, Commerce, Industry and the Housing Authority. Some cities, towns and counties also fund child care. Your consultant should make finding alternative sources of funding a top priority.

V. ON-SITE CHILD CARE

Once the decision has been made to implement on-site child care, the space, the facility itself, and the corporate structure must be planned.

Organization of an on-site center as a separate entity without direct IRS involvement, but with voluntary IRS employee, NTEU and parent participation offers two significant advantages. First, the District or Service Center Director (or other head of office) is not responsible for direct oversight on an ongoing basis. Second, the existence of a separate legal entity provides a significant, if not total, shield against direct liability for both non-participating IRS individuals (i.e., those not on the Board of Directors) and the Service as an institution.

This is true since the Child Care Center is a separate entity as a corporation. In this situation, center administration would be the responsibility of a Board of Directors. The Board should be comprised of a mix of IRS management personnel, NTEU officials and parents. The Board has full discretion and responsibility for planning, designing, hiring and fund raising along with all administrative aspects of running a center.

A. Identification of Space

Most state regulations require that space be located on the ground level of a building with direct access to the outside. This regulation usually applies if a facility will be caring for infants. However, if a facility is caring for 2 year olds or older, the center can be located on a lower level (basement). Check local licensing requirements on this ruling.

Facility (Space):

Many issues must be considered in the placement of this center. Some of the more important involve:

- the number and ages of the children and the space required per child for each age group.
- major or minor renovation needs.
- the security, health and safety of the children.
- the outside play area. Some states do not require adjacent playgrounds as long as there is a public park within close proximity to the facility.

Most state licensing regulations require at least 35 square feet of indoor classroom space per child and 100 square feet for outdoor space per child. However, for infants, this will vary to allow for cribs.

Staffing:

One of the first steps to be taken in planning a day care center is to hire a director. The director would be responsible for the selection of the rest of the staff and the overall setting up of the facility. Once the center is open, the director has the responsibility for the day-to-day operation, reporting any administrative problems to the Board of Directors. State and local regulations will determine how many staff members should be hired and this will be based on the ratio between staff and children.

B. Consultant

A child care consultant should be hired when planning and establishing child care services. They can be hired to plan the entire operation of child care services or for specific services. They are knowledgeable in the complications of the start-up process, designing the facility to meet local licensing requirements, developing curriculum/activities for the center, and also in other facets of operating the center.

Hiring a consultant for each child care center to be established is recommended for assistance in the planning of child care centers for IRS employees. (See sample statement of work at Exhibit E)

C. Board of Directors

Function:

The purpose of the Board of Directors is to oversee the administrative affairs and property of the corporation. The Board assists the staff of the day care center in reaching the goals for which it was created. The Board provides assistance by making decisions about budget, staffing, policies, fund raising, and other special activities. The Board of Directors does not have responsibility for the day-to-day operation of the center. The Board of Directors conducts its business in accordance with the By-Laws and Articles of Incorporation (see Exhibits F & G).

Composition:

The number of members on the Board may vary. It should be made up of one voting official representative of IRS management and one voting official representative of NTEU (see Exhibit M, IRS/NTEU signed Charter.) The remainder of the board members should be parents of children enrolled in the center. This is particularly important because parents are the individuals most impacted by the Board's decisions. The Director of the center should also be on the Board as a non-voting member.

Term:

The term of a member of the Board of Directors is determined in the By-laws of the Corporation; a two-year term with staggered appointments allows continuity and stability in the Boards membership. The term expires either at the end of the fixed period or by resignation, death, or removal in accordance with the By-laws of the corporation. Vacancies are filled by a majority vote of the remaining members, except for the official NTEU and management members, who are appointed by the union and management.

Chair:

The Chair of the Board of Directors is elected by a majority vote of the Directors. A Vice-Chair may be elected in the same manner. Either the Chair or the Vice-Chair should preside over the meetings of the Board. The positions of Chair and Vice-Chair should be refilled periodically. Those individuals filling the positions of Chair and Vice-Chair should be prepared to perform other related duties as may be requested by the Board of Directors. Other Board positions should be elected by majority vote also.

Meetings:

The number of regular meetings to be held by the Board of Directors is established in the By-laws. The annual meeting is usually the last meeting of the fiscal year. Special meetings can be called at the discretion of the Chair, or at the request of one-third of the Directors.

D. Establishing a Non-profit Corporation

Legislation allowing rent free use of space, utilities and maintenance requires centers to be non-profit (see Exhibit H). General guidance for working through legal channels to establish a center is provided here; however, professional legal review and counsel should be obtained prior to filing any documents since requirements vary from state to state.

Most child care centers operate as non-profit corporations. The distinction between profit and non-profit corporations is based on four differences. These are as follows:

- the official forms for incorporation are different and filed in different state offices;

- forms for profit organizations require information about stockholders; nonprofit forms inquire about members and their rights in the organization;

- nonprofit organizations must limit the purpose of the organization to comply with Internal Revenue Service stipulations if tax-exempt status is sought;

- the filing fee for profit corporations is typically higher, often as much as five times higher.

In most states, forming a corporation is a relatively simple exercise. Procedures do vary in complexity, however, and are determined entirely by each state.

There are essentially four major steps to incorporating a day care program in most states. The steps include:

- preparing articles of incorporation;
- preparing by-laws;
- conducting an initial incorporator's meeting; and

E. Articles of Incorporation

Each state issues the necessary forms and instructions for developing articles of incorporation. The same office usually accepts and processes completed forms.

The guidelines ask a series of questions in three broad areas. Principally, the state wants to know:

- the purposes for establishing the organization;
- the powers it will have; and
- who the members are.

The purposes should be stated in brief and simple language and should be acceptable to the Internal Revenue Service for classification as an "educational" or "charitable" organization. To ensure tax exempt status, a statement in the articles should restrict the purposes "to those permitted under Section 501(c)(3) of the Internal Revenue Code of 1954 or its successor sections in subsequent revenue codes." A copy of Package 1023, Application of Recognition of Exemption under 501(c)(3) of the IRS Code, can be obtained from an IRS Distribution Center.

The powers claimed by the corporation can be simply stated as: "all those powers permitted to be exercised by non-profit corporations in (your state) which are also permitted to be exercised by organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 or its successor sections in subsequent revenue codes."

The membership of the organization is made up of either the parents or the Board of Directors. Most states permit those on the Board to serve as members. In states where this is not permissible, both the members (parents) and the Board are required to hold separate meetings and maintain separate records. When it is possible to allow the Board to act as the membership, it is probably advisable to do so and thereby avoid unnecessary paperwork and administrative management.

A statement on disolution of the centers should be included in the articles.

A sample copy of articles for day care centers is contained at Exhibit G. Again, if these documents are used as models, legal review of the documentation should be obtained before filing.

F. By-laws

The by-laws of the corporation are its rules for deciding:

- who has decision-making power;
- what kind of decisions will be made;
- when decisions can be made;
- how decisions must be made.

Thus, the by-laws are the basic rules the organization will use to conduct its affairs. Most states require that by-laws be developed but do not get involved in their content. By-laws should be prepared whether or not the state requires them. The by-laws should not in any way conflict with the articles of incorporation. This is particularly important for organizations that wish to be tax exempt and will undergo an Internal Revenue Service Review.

G. Filing the Articles

In most states, filing the articles, refers to taking the articles and by-laws to the state office that issued the guidelines along with a check for the amount of the "filing fee." The fee differs from state to state. After the documents have been processed and approved, written notification of approval along with a charter will be issued to the corporation. The amount of time required for processing the documents vary from state to state.

H. Local Licensing Requirements

State governments have made the determination that a child is not capable of self-protection. During the time that a child is away from its legal guardian(s) and care is entrusted to another, "reasonably protective measures" against mental and physical risks must be taken. Thus, states require that potential day care providers meet specific standards and obtain a license before commencing to provide care for children.

Licensing procedures for day care centers vary from state to state. To become familiar with state requirements, obtain a copy of local licensing requirements from the state office licensing day care centers.

I. Tax Exemption

A day care center which operates as a non-profit corporation is exempt from paying tax on its income in accordance with section 501(c)(3) of the Internal Revenue Code of 1954. Tax exempt status is obtained by filing a Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. The application must be accompanied by the organization's Charter, By-laws, Articles of Incorporation and any other enabling documentation.

Every organization which receives an exemption from income tax is required to file a form 990 annually with the Internal Revenue Service. Most center directors indicate that services of a professional accountant should be obtained to ensure that all Internal Revenue Service requirements are met. For information regarding tax exemption, contact the EP/EO Division at the National Office or locally.

J. Insurance/Legal Issues

General and Comprehensive Liability: (Exhibit I)

The cost of insurance policies will vary from state to state depending upon the coverage. If a child is injured while in the care of a center, the parents may sue the center if they believe that the staff were in some way negligent. If the center is covered with a liability insurance policy, and they must be, attorneys of the insurance firm will represent the center in court. If the court decides that the center is liable, the insurance company will pay the money judgement up to the limits of the policy.

General liability insurance policies will usually cover four kinds of costs associated with negligence that occurs at the site of the day care center or at the site of center related field trips. They include:

- bodily injury to others;
- damage to another's property;
- immediate medical relief; and
- the cost of legal defense.

In addition, an insurance policy should be obtained to cover the Board of Directors.

K. Multi-Tenant Child Care Centers

In Federal buildings where IRS will be participating with other government agencies to set up child care centers and the Service will be the lead agency, IRS Guidelines should be followed. In addition, the Board of Directors will have one IRS and one NTEU voting member. In locations where IRS is not the lead agency but a participating agency, the Board of Directors will also include one IRS and one NTEU voting member. You must make this arrangement with other participating agencies. To date, this has not been a problem.

Legal Issues:

The General Legal Services Division of the National Office Chief Counsel's office was asked by the Task Force to comment on several legal issues: These issues are:

1. What is the degree of the Service's liability for death or injury incurred by a Service employee's child while being cared for at an agency-sponsored child care facility, either on Government property or at a private facility?

GLS response: If the center is run by Service employees and is situated on government property, the United States could be held liable for the death or injury caused by a negligent or wrongful act of Service employees.

If the Service contracts for the performance of child care services, then the United States is generally not liable for the negligent or wrongful acts of a contractor. The exception is that the United States could be held liable for the negligent selection of a contractor.

2. Which risks or hazards should liability insurance attempt to cover and thereby limit the Service's potential for liability?

GLS response: If the IRS were to run the facility directly (which it cannot, incidentally), no insurance policies could be obtained because the government is a self-insurer. However, if the IRS were to hire a contractor to run the facility, it could legally require the performing contractor to carry insurance. Comprehensive general liability would be needed to protect against the risk associated with property damage and bodily injury to and by the children and staff. In addition, student accident insurance, workers compensation, bonding, fire and personal liability for supervisory personnel should be obtained.

3. To what extent would local law, either statutory or regulatory, apply to a Service-sponsored child care facility operated on government property?

GLS response: Any child care services provided on Federal property would not necessarily be subject to state or local regulations unless those specific laws had been explicitly or implicitly adopted by the United States.

There are, however, situations in which the United States has consented to the application of state law on Federal property. From these prior decisions, it appears that the state law would govern any civil action brought against employees or the United States for common-law torts (i.e., civil wrongs) and any criminal actions occurring on government property not covered by Federal law.

(NOTE: Regardless of the foregoing, it should be noted that there are benefits to be derived from being a licensed day care facility including providing the parents with assurance that their child is in a facility that fulfills independent standards. The study group strongly recommends meeting local licensing regulations.)

4. Could any Service official be held personally responsible for liability arising from the operation of a child care facility or service?

GLS response: If the care is provided by an independent contractor or a separate entity, it appears that the only possibility of personal liability on the part of the Service employees would be through negligent selection of the provider. If the Service decides against hiring an independent contractor and uses its own personnel (through a separate entity - a tax exempt corporation) to run the program, it is still unlikely that supervisory officials would be found liable for damages arising from the torts of their subordinates, unless they were personally involved.

5. Can the Government limit any form of potential liability, by consent, arising from the agency sponsorship of a child care facility or service?

GLS response: Although IRS may attempt to limit liability by seeking a waiver from the employee/parent, the courts would not give credence to such agreements. It is likely that the court would conclude that IRS had the obvious advantage because of disparity in size and because of the employer/employee relationship.

6. To what extent, if any, could the Service be held responsible for death or injury occurring at a private child care facility on private property engaged by an employee exclusively as a result of a Service referral?

GLS response: Since IRS could be held liable for negligently recommending a child care facility, the recommended alternative is for the IRS to compile a list of local child care facilities, specifically state that IRS is not recommending any of these facilities and suggest the employees/parents select a facility based on their own investigation.

K. IRS/NTEU Minimum Program Requirements

In addition to local licensing requirements, IRS and NTEU have their own minimum requirements for a quality center. Listed below are those requirements established by the IRS/NTEU Child Care Team:

- conform to state and local requirements prior to opening center;

- after six months of operation at all age levels, establish procedures to receive accreditation by the National Acadamy of Early Childhood Programs (Div. of NAEYC). All offices are to receive a copy of these procedures to be used, if and when they establish a center. A copy of the NAEYC Accreditation Criteria can be obtained from the National Office Child Care Program Manager; and

- follow IRS/NTEU "Quality Assurance" evaluation guidelines (to be developed).

L. Safety and Health Considerations

The on-site safety and health of all children must be considered on a daily basis. Areas of concern, requiring continued inspection, include:

- facility and outside (playground) surfaces;

- unobstructed means of egress;

- parking facilities and patterns;

- equipment and play patterns; and

- Toys and other play materials.

Child care facility directors should consult IRS Safety and Health officers for assistance on safety and health issues.

In addition to complying with local health and safety regulations, we strongly encourage following the American Association for Leisure and Recreation checklists (see Exhibit N). Copies of the checklists can be obtained from the American Association for Leisure and Recreation, 1900 Association Drive, Reston, VA 22091, 703/476-3471.

VI. ALTERNATIVE METHODS OF DAY CARE

No single form of child care service will be universally appropriate for all offices. Some small offices may simply not have a need for child care services at all. Some will have a need for some type of service but for various reasons, employer-sponsored day care centers may not be appropriate. Outside factors may also play a role in deciding the type of services to be provided. Some communities, for example, have excellent referral services (for a fee, individual employees are referred to a facility to meet their needs).

The type and extent of child care services to be provided is something that must be decided by each head of office and NTEU Chapter President, considering the needs of the office and consistent with the IRS policy on child care services.

Following are several approaches to available day care:

- Off-site Centers - private off-site centers serving only the children of the agencies - IRS would provide space and contract out the services.

- On-site Centers - sponsored by the IRS but provide rent-free space to a non-profit organization to operate.

- Information and Referral Services - provided through in-house sources or by contract with a community information and referral agency. Parent seminars would also be another vehicle for providing information.

- After-school Programs - This program can be contracted out separately with a referral service or in conjunction with an on-site day care facility. This service can be established for after-school as well as for during school vacations.

- Family Day Care Homes - This program can be available for those parents and children who prefer a family style atmosphere. In addition, it enables parental convenience in a neighborhood setting and more flexible hours. Family day care homes may be less expensive and able to accommodate specialized care (i.e., extended hours, infant care).

Information and Referral

Information and referral (I & R) agencies provide ssistance to parents and employers in finding accessible child care. These agencies keep up-to-date listings of child care centers and family day care in the community. Child care included on such lists should be required to have met state requirements and, if possible, be licensed. Added services with I & R agencies include training and counseling on parent education. Employers may contract with I & R agencies on a per-employee basis or on an annual-fee basis. Some I & R agencies are computerized and work on a network system across the United States.

It is recommended that IRS use this type of service for posts of duty that would not be able to feasibly operate a child care center in their area. This service should also be made available to employees who choose not to use IRS established child care.

Types of Day Care Centers

Contracted Providers: (Not yet implemented by IRS)

There are situations in which there are employees with child care needs but there is an insufficient number of employees to support an on-site center. One resolution would be for the Service to contract directly with one or more already established day care centers to guarantee a specific number of slots for IRS employees. This alternative could be utilized for small needs situations and for those facilities hiring WAE's on a seasonal basis. The contract can provide for a specific number of slots to be available at all times and an increased number for those seasonal times (January - April) on an recurring basis.

Multi-Agency:

A multi-agency child care center is where several federal agencies work together to develop and support a center in a federal office building housing several government agencies, or in cities where at least one district and a regional office co-exist.

This approach has been implemented in several multi-agency buildings, usually spearheaded by a Federal Executive Board (FEB).

Parent Seminars

Seminars for working parents are probably the least expensive means of employer support for child care programs. They can be scheduled during lunch hours so employees do not miss work or family time. Seminars can be organized by family support organizations, consultants, and parent task force groups. Topics deal with such issues as managing work and family responsibilities and identifying community resources for working parents.

Family Day Care Home

Background

While some IRS Field Offices do not have space to provide on-site day care centers, family day care can be a viable alternative.

Family day care means care given to a child in lieu of parental care in a residence other than the child's. This care is provided by a "provider" - an adult who has primary responsibility for the operation of the family day care home.

In addition to local licensing requirements, each IRS office must follow national IRS/NTEU quality guidelines (under development) and may develop its own requirements if the IRS sponsors such providers.

Liability Issue

Offices are reminded that they will assume some liability on behalf of the Service by referring IRS employees directly to individual providers. For such programs, "quality assurance guidelines" can reduce the possibility of referring employees to providers who have practices or policies which are not in the best interests of children.

An option to direct referral would be to refer employees to a qualified referral service, thus reducing the liability to the Service.

USDA Nutrition Program

Providers will have the option of participating in the USDA Nutrition program. If a provider does participate in the program, he/she will be eligible for reimbursement of funds for meals. However, a sponsor is required to administer the program for the provider.

A provider does not have to participate in the USDA Nutrition Program, but still has to be registered or licensed by local authorities.

Obtaining IRS-Sponsored Child Care Providers

IRS can obtain its own providers by developing its own requirements in addition to most state or local licensing requirements. A monitoring process can also be developed. The IRS would train each provider in various areas, i.e., child deveBopment, health and safety, nutrition, etc. After the initial training, that provider would then become a certified IRS provider.

Such program requirements, monitoring processes, quality assurance guidelines, and training programs will be developed by the IRS National Office during calendar years 1989/1990. Offices wishing to develop such programs should contact the National Office Child Care Program Coordinator for assistance in program development.

In order to acquire interested providers, offices should survey the locations to see how many providers will be available and interested in becoming an IRS-Certified Child Care Provider. The survey will also give the geographical location of the provider.

Once providers and locations have been determined, the advertising process for providers should begin. There are several ways to advertise:

- through IRS Newletter (for an interested employee's spouse);
- post on community bulletin boards;
- local newspapers; and
- office bulletin boards.

Fee Policy

Fees for each IRS child care program will be determined by the provider and not the IRS. However, several facts should be considered:

- Consider special needs (e.g., handicapping condition, unusual hours, diets, etc.);
- Fees should be compatible with other similar services in your area;
- Consider discounts for additional children in the same family; and
- Consider which fee, i.e., monthly, bi-weekly, weekly, will be most advantageous.

Fee Policy Guidelines

Providers should establish their own policies with individual parents. The following is a list of suggestions:

- Charge a penalty fee for late pickups, or an overtime fee for agreed-upon extended hours.
- Vacation - charge at least one week paid vacation.
- Illness - no reimbursement of fees unless child is ill over three days.

Reporting Requirements

Each child care provider should notify the IRS coordinator of administration events such as:

- child vacancy;
- need for substitute and emergency care;
- change in address and telephone number;
- child accidents that require medical attention;
- suspected child abuse; and

- termination of provider status (at least 2 weeks notice should be given).

Each IRS child care provider has certain responsibilities to the parents. Providers should supply parents with appropriate information relating to several circumstances. Some of the circumstances are:

- notification of medical emergency;
- notification of any communicable disease that another child has;
- notification of acute illness to determine a care plan for a child who becomes ill while at the provider's home;
- notify parents of any planned trips;
- provider should attempt to give parents on a daily basis any occurrence such as developmental accomplishments, behavior, minor injury involving their child; and
- have insurance available for review by parents, if need be.

USDA Child Care Food Program

Financial support for providers for food service may be obtained through the USDA Special Nutrition Program when provider complies with the USDA Regulations.

Delivery and Release of Children

The parent/parents will be responsible for the child's safe arrival and departure. Unless prior written arrangements have been made with the provider, only the enrolling parents or legal guardian may take a child from the provider.

Age Group

Ages of children cared for by individual providers should be at the discretion of the provider and comply with local licensing requirements.

Equipment and Materials

Indoor and outdoor program equipment and materials will be the responsibility of the provider. Equipment should comply with local licensing requirements. Items should be durable, safe and appropriate to age levels and interests. Materials will include those with open-ended use (e.g., paper, paint) and those that have a prescribed use that are self-correcting such as puzzles. Toys should be sanitized at the end of each day. The quantity of materials and equipment should be sufficient to avoid excessive competition among children and long waits for use.

State Licensing

Most states or local jurisdictions require licensing for family day care providers. Any local Department of Social Services office will have information governing licensing.

Suspension of IRS Certification

Suspension or revocation of the IRS certification will be the decision of the IRS coordinator. Immediate suspension of the provider will occur if the provider fails to comply with the IRS requirements for a provider. The certification shall be returned to the IRS coordinator and retained during the suspension period or upon revocation. A report should also be made to the local licensing jurisdiction.

What a Child Care Provider Should Provide:

- a warm, nurturing environment with consistancy;
- clean quarters;
- an appropriate amount of toys and games;
- nutritionally balanced meals and supplemented as appropriate with food items provided by parents;
- planned developmental activities;
- previously approved substitute provider in case of emergency; and
- sufficient indoor/outdoor space.

Parents Role

Parent involvement in the IRS provider program is important. Parents can improve the services by:

- monitoring the condition of the IRS provider's home;
- observing the child while at the home;
- listening to what your child tells you about the care;
- discussing any problems with the provider;
- frequently visiting the home; and
- contacting the IRS coordinator if provider fails to maintain a satisfactory service.

IRS/NTEU Role

The IRS/NTEU coordinators should monitor the provider's home frequently. Coordinators should monitor such things as:

- development program;
- nutrition program;
- activity program;
- health and safety; and
- criminal check on adults in homes;

Monitoring should be done monthly or more often if necessary. Home visits by the Coordinators should be done on a scheduled basis, but should not be limited to these - unscheduled visitations are strongly encouraged.

The IRS/NTEU Coordinators should strongly encourage parents to monitor the home as often as they wish.

EXHIBITS

EXHIBIT A

GSA Regional Child Care Coordinators

NAME	FTS	COMMERCIAL
Phyllis Jaffee General Services Administration O'Neill Federal Office Building 10 Causeway Street, Room 901 Boston, MA 02222	835-5839	(617) 565-5839
Thomas Trott Regional Child Care Administrator General Services Administration 26 Federal Plaza, Room 16-100 New York, NY 10278	264-4742	(212) 264-4209
Jan Ziegler Director, Real Estate Division General Services Administration 9th and Market Street, Room 4109 Philadelphia, PA 19107	597-1307	(215) 597-1307
Brenda Rice Child Care Specialist General Services Administration 75 Spring Street, Room 418 Atlanta, GA 30303	242-7778	(404) 331-7778
Robert Duffer Director, Real Property Management and Safety Division General Services Administration 230 South Dearborn Street Chicago, IL 60604	353-5612	(312) 353-5612
James Hoover Director, Real Property Management and Safety Division General Services Administration 1500 East Bannister Road, Room 2147 Kansas City, MO 64134	926-7241	(816) 926-7241

Casey Bowen Director, Real Property Management and Safety Division General Services Administration 819 Taylor Street, Room 12A26 Fort Worth, TX 76102	334-2551	(817) 334-2551
Sandy Kastella Realty Specialist Building 41 Denver Federal Center P.O. Box 25546 Denver, CO 80225-0546	776-7216	(303) 236-7216
Larry Sotomayer Supervisory Realty Specialist General Services Administration 15th and C Streets, S. W. Auburn, WA 98001	396-7242	(206) 931-7242
L. Diane Savoy Assistant to Deputy Regional Administrator General Services Administration 7th and D Streets, S.W., Room 7022 Washington, DC 20407	472-6161	(202) 472-6161

EXHIBIT B

Internal Revenue Service
memorandum

date:

to: All Employees

from: (Head of Office Being Surveyed)

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subject: Child Care Questionnaire

The Internal Revenue Service and the National Treasury Employees Union are preparing to negotiate over the establishment of day care centers. In addition, a strategic initiative on child care has been approved by the Commissioner to explore the need for establishing child care centers for the children of IRS employees. We have been selected by the Child Care Study Group and NTEU to participate in a survey of IRS employees to determine the interest in, and need for, child care centers.

Please take the time to answer this questionnaire -- official time is being provided for this purpose. Answering the questionnaire is, however, voluntary and your response will be anonymous. Your careful attention to providing complete and accurate answers is vital to the success of this effort. Please enclose the completed questionnaire in the attached envelope and return it to your supervisor. On behalf of the Study Group and NTEU, I appreciate your assistance.

1. Would you be interested in enrolling your child (children) in a federally sponsored child care center located near or at your place of work?

   Yes _____ No _____

2. If you don't currently have children in need of day care, do you expect to be interested in enrolling a child in a federally sponsored child care center within the next 5 years?

   Yes _____ No _____

If you answered "Yes" to either of the above questions, please complete the rest of the survey.

3. What is your type of employment? (check one)

   Permanent (full-time or part-time) _____

   Intermittent (temps, 700-hour appts., etc.) _____

   Seasonal WAE _____

All Employees

4. What days do you normally work? (check all that apply)

Sunday _____ Monday _____ Tuesday _____ Wednesday _____

Thursday _____ Friday _____ Saturday _____

5. What time do you normally start work?

_____:_____(time) A.M. or P.M. (circle one)

6. How many hours per day do you normally work? (check one)

1-4 _____

5-8 _____

9-12 _____

7. What is your current grade? (circle one)

1 2 3 4 5 6 7 8 9 10 11 12 13 over 13

8. Who currently cares for your child (children) when you work? (check the one that is most true)

Babysitter _____ Relative _____ Housekeeper _____

Child Care Center _____ Nursery _____ Other _____

9. How many children do you currently enroll in a day care center in each age group?

0-1 yrs. old _____ 5-7 yrs. old _____

1-3 yrs. old _____ 7-10 yrs. old _____

3-5 yrs. old _____ over 10 yrs. old _____

10. How many miles <u>one way</u> do you currently transport your child (children) for child care? (check one)

0-5 miles _____ 16-20 miles _____

6-10 miles _____ Over 20 miles _____

11-15 miles _____

All Employees

11. How much do you currently pay for child care per week? (check one)

$ 0-25 _____ $76-100 _____

$26-50 _____ $Over 100 _____

$51-75 _____

12. Which of the following services would you like to see offered by a child care center? (check all that apply)

Food Service _____ Emergency Health Care _____

Educational Programs _____ Recreational Activities _____

Health Screening _____ Arts and Crafts _____

Field Trips _____ Music/Dance Activities _____

Special Programs for the Handicapped _____ Infant Care Services _____

After School Care _____

13. How many months of the year would you use this facility? (check one)

0-3 _____ 7-9 _____

4-6 _____ 10-12 _____

14. During what periods of the year would you use this facility? (check all that apply)

Jan. - Mar. _____ July - Sept. _____

Apr. - June _____ Oct. - Dec. _____

15. How many children would you enroll in a federally sponsored child care center in each age group?

0-1 yrs. old _____ 5-7 yrs. old _____

1-3 yrs. old _____ 7-10 yrs. old _____

3-5 yrs. old _____ Over 10 yrs. old _____

All Employees

16. What means of transportation would you use to transport your child (children) to a child care center located near or at your place of work? (check all that apply)

    Private (i.e., car, vanpool, etc.) _____

    Public (i.e., bus, train, subway) _____

    Other (i.e., walk, etc.) _____

    None (would not be able to transport child (children) to child care center) _____

17. Would the availability of child care centers at or near IRS facilities be likely to lengthen the time you would want to continue working for the IRS?

    Yes _____ No _____

18. Would the availability of child care centers at or near IRS facilities enhance your availability to apply for other geographical locations?

    Yes _____ No _____

19. Would the certainty of daily child care at or near your work place be likely to cut down on your need for unanticipated or emergency leave?

    Yes _____ No _____

20. We would appreciate any comments you would like to add.

_____

_____

_____

_____

_____

_____

_____

General Services Administration
Public Buildings Service
Washington, DC 20405

EXHIBIT C

DEC 2 1988

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS
FOR PUBLIC BUILDINGS SERVICE -
2P, 3P, 4P, 5P, 6P, 7P, 9P, WP, WQ

FROM: DUNCAN LENT HOWARD
COMMISSIONER - P

SUBJECT: Policy for the Establishment of Child Care Centers

The General Services Administration (GSA) remains committed to the establishment of child care centers in GSA-controlled space. During fiscal year 1988, we opened 26 child care centers under the authority of 40 U.S.C. 490b (commonly referred to as the Trible Amendment). This memorandum clarifies and defines GSA's role and the role of sponsoring Federal agencies when establishing future child care centers, and it is effective immediately.

Center Locations Exempt from the Policy

Attached is a list of proposed child care centers which were negotiated and agreed upon between your staff and sponsoring agencies during fiscal year 1988. These centers are to be completed in accordance with the commitments made to the sponsoring/lead agencies involved in the proposed center under the authority of the February 29, 1988, policy memorandum (copy attached). All other child care center projects not on this list are to be completed in accordance with the policy set forth below.

Policy for Space and Building Services

Federal agencies are responsible for determining their respective child care needs and then requesting the appropriate space from GSA. Upon receipt of such a request, along with the results of a needs assessment survey indicating sufficient employee interest, GSA will provide the initial space alterations as described in this memorandum. The cost of any other features (e.g., security alarm systems) will be fully reimbursed to GSA by the tenant agency(ies).

When necessary, GSA will acquire leased space to house a child care center or to relocate agency activities displaced by a child care facility established in GSA-controlled space. When leasing space specifically for a child care center, the lease term should not exceed 5 years unless otherwise determined by the contracting officer to be in the best interest of the Government. In the event the space for the child care center is part of a large lease acquisition (e.g., lease consolidation, agency expansion space), the lease term for the child care space should be coterminous with the other space leased by the Government in the building.

Space solely for the purpose of providing a child care center will not be made available by GSA through new construction nor through the purchase or lease of modular buildings. However, in rare circumstances where no other space is or can be made available, an agency's child care needs may be satisfied through the use of a modular building. All expenses associated with the purchase or lease and site preparation of modular buildings, including design services and water, sewer and utility line installation costs shall be paid by the sponsoring agency(ies).

Where requested, GSA will provide technical advice and/or design services and site preparation for the purchase and installation of modular buildings in delegated facilities at the sponsoring agencies' expense.

Policy Implementation

Requests for space for child care centers will continue to be given priority. The regional Public Buildings Service (PBS) is responsible for satisfying the space requirement. PBS will analyze and develop, with the requesting agency(ies), the full requirements package and locate, prepare and assign the space in the most economical and timely manner feasible.

Space assigned for child care centers will be provided by GSA and, to the maximum extent practicable, built to conform to the State and local standards applicable to child care centers. The following procedures apply to space used for child care centers:

A. Interior Space Finishes

o New Agency(ies) Space Assignments

The initial space alterations for newly assigned space for child care centers will be provided by GSA as follows:

- Ceilings structurally sound and finished;
- Ceiling-high interior partitions;
- Heating, ventilation, and air-conditioning (HVAC) systems capable of maintaining an acceptable operating environment;
- Adequate lighting to maintain acceptable levels of illumination;
- One duplex or quadruplex (as required) electrical outlet and one telephone outlet to a maximum of one to each 100 square feet of occupiable space;
- Plumbing installation as required, including water and waste systems, water heaters, and normal hookups consistent with the type of operations proposed, e.g., sink, lavatory, toilet installations, washer/dryer;
- Child sized toilets, including child sized handicapped equipped toilets, sinks and basins, child sized water fountains;
- Built in kitchen cabinets and shelving;
- Other built in cabinetry (e.g., cubby holes) as required.
- Utility hookups for kitchen appliances and office equipment;
- Acceptable grades of commercial anti-static carpeting; and/or vinyl tile as required.
- Appropriate window treatment.
- Appropriate fire and safety features, including fire alarm and detection equipment, to meet GSA's or local safety criteria for any given location (see the attached fire and safety policy memorandum dated March 31, 1988, for additional guidance).

o Existing Agency Space Assignments

When an agency's existing assigned space is to be made available for child care center use by GSA, the cost of alterations will be fully reimbursable to GSA. However, in instances where the alterations will upgrade the space classification (e.g., toilet areas), GSA will provide and fund the alterations and classify the space accordingly.

B. Outside Play Area

Whenever it is feasible and practicable, GSA will provide an appropriate outdoor play area. In localities where outside play areas are required for licensing purposes, GSA will be responsible for preparing the land (e.g., grading, ground cover) and providing a fence as appropriate. The sponsoring agency(ies), user group, or provider will be responsible for the provision, installation and maintenance of any playground equipment.

C. Building Services

It has been determined that for various safety and health reasons, child care centers will continue to be cleaned in the same manner as clinical space and, in addition, bare floors will be wet mopped daily. GSA will fund this level of cleaning. Any other above standard services and utilities will be provided to agencies on a reimbursable basis in accordance with existing policies and procedures.

D. Space Classification

All space for child care centers provided in accordance with this policy will be classified as office and special space where appropriate. Agencies will pay Rent according to these space classifications.

GSA/Agency(ies) Roles and Relationships

GSA's role is to provide the initial space alterations as specified in this memorandum and assign the space to either a single agency or to multiple agencies as joint use, and to provide standard-level building services. GSA will also provide initial space design services for a center and these services may be accomplished in-house or by contract.

When appropriate, GSA may also sponsor child care centers for its employees or, where GSA is a major tenant, it may act as a co-sponsor. In such cases, GSA will participate in any purchases or other expenditures which are normally the responsibility of a sponsoring agency as detailed below.

Agency(ies) will promote the child care initiative, determine their own need for a child care facility, sponsor child care centers for their employees, submit space requests for their requirements, pay for all above standard build out features and building services, allocate space under a license or other appropriate authorization document to either the provider of child care services or an employee user group, and pay Rent to GSA for the assigned space. The sponsoring agency(ies), user group or the provider will be responsible for furnishing moveable items such as kitchen appliances, furniture, play and playground equipment/materials, telephone installation and monthly service charges, and any other items necessary for a fully functional child care center. Further, agencies are responsible for establishing user groups and for ensuring the selection of a suitable provider to operate the center.

The provider will occupy the designated space pursuant to an assignment authorizing the agency or the lead agency (the agency executing the SF-81 in cases involving a joint use assignment) to allocate the space to either the user group or directly to the provider. The provider is fully responsible for hiring the child care staff and operating the center.

Employee Background Checks

The sponsoring/lead agency of a child care center will establish procedures to ensure that all employees of the center, currently employed and those employed in the future, are subject to a criminal record background check. The employee background screening requirement will be specified in the above-referenced license or other appropriate authorization document.

The provider is responsible for conducting a check with former employers to verify employment history and suitability for employment in a child care center.

GSA will provide guidance and technical assistance to the sponsoring/lead agency(ies) in performing criminal background checks of all employees of child care centers. Upon request by the sponsoring/lead agencies, GSA will conduct these background checks on a non-reimbursable basis.

Compliance with State and Local Requirements

Child care centers and child care providers in GSA-controlled space shall be licensed under applicable State and local law. To the maximum extent practicable, GSA will comply with State and local laws and regulations relating to the development of facilities for use as child care centers.

We are in the process of finalizing a guidebook on establishing child care centers in federally controlled space which outlines, in detail, the procedures of this policy as well as other guidance and advice on opening child care centers. Upon completion, this guidebook will be issued to the regions as well as other Federal agencies. In the interim, should you have any questions, please contact Ann Everett, Director, Child Care Staff, on FTS 566-1516.

Attachments

cc: Regional Administrators
1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, WA
Associate Administrator for Operations and Industry Relations - AL
Regional Child Care Coordinators

Internal Revenue Service

memorandum

CC:GLS-3130-88
Br3:JSawtelle

EXHIBIT D

date: OCT 12 1988

to: Chief, Counseling, Health and Safety Section

from: Director, General Legal Services

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subject: Use of Appropriated Funds to Pay Salaries of Child Development Center Employees

This is in response to your memorandum requesting our advice on the availability of appropriated funds for the establishment of child care centers. Specifically, you wish to know whether appropriated funds may be used to hire directors or assistant directors to help establish the center until sufficient fees have been collected to make the center self-sustaining. We believe that, subject to the qualifications set forth below, this may be done.

As a general rule, the availability of appropriated funds for a particular purpose may be derived from the specific language of an appropriation act or implied under the necessary expenses doctrine. We have reviewed the Service appropriations for the current and preceding fiscal years, and there is no specific appropriation in them for day care facilities.

The question of whether the establishment of child care centers may be justified under the necessary expenses doctrine was considered by the General Counsel, GAO in an unpublished opinion B-39772-O.M. (January 16, 1976) (copy attached). After discussing the matter at length, the General Counsel concluded:

> In light of these considerations, we believe expenditure of current [agency] appropriations for any expenses associated with establishment of a day care center is proper, assuming that the operation of the center is administratively determined to be necessary for employee welfare. However, recognizing that the matter is not free from controversy, and in order to avoid any difficulties with Congress, we believe any substantial capital expenditures for renovation should be set out in our budget and made known to the cognizant Appropriation Committee.

This Division, in an opinion, CC:GLS-995-85 (April 24, 1985) (copy attached), discussed the same question and concluded:

> In our opinion the IRS could in theory use its appropriated funds to fund a day care center subject to a high level determination of the propriety of doing so and subject to their availability. However, we wish to stress the controversial nature of reaching such conclusion and recommend that even if an immediate decision is reached to fund day care centers that consideration be given to eventually seeking enabling legislation.

Before any action was taken on this proposal, Congress enacted 40 U.S.C. 490b, which authorized federal agencies to provide space in their buildings to persons or entities providing child care services, under certain conditions as set out in the statute. The statute authorizes the agency to provide "services," which are defined in the act to include, essentially, utilities, furniture, and equipment. There is no provision for payment of salaries of center employees.

We understand that the National Office has allotted such space to a non-profit corporation which has been formed for the provision of child care services and that other Service offices are also establishing their own child care centers.

In considering the above-quoted material, it is evidently the Congressional purpose to avoid permanent subsidies, other than free space and "services" as defined in the statute, to agency child care centers. However, it is also the evident Congressional purpose that there be such centers, so that the need for these facilities is no longer controversial. If the unavailability of necessary start-up costs resulted in a failure to realize this employee benefit, or caused it to be priced beyond the reach of the employees intended to be benefited, the Congressional purpose would be totally frustrated.

We therefore believe that appropriated funds may be used to pay for start-up costs, provided that an administrative finding is made that a strictly limited and temporary expenditure of such funds for these costs, including the salaries of administrators, for a short defined period, is necessary for the establishment of such centers. We believe that this would be acceptable to the Comptroller General and consistent with the Congressional intent as set out in 40 U.S.C. 490b. This opinion is limited to the specific question posed, that of administrators' salaries. If you have questions about other possible start-up costs, please contact this office for a further determination.

We invite your attention to our previous memorandum CC:GLS-1526-85 (June 10, 1985) (copy attached) regarding potential Service liability in providing these centers. We suggest that, once the Service has established the center, it divest itself

completely of any responsibility for the day-to-day operation of the center in order to eliminate its exposure to liability.

We hope this answers your question. If you have any further questions, please contact Jeffrey Sawtelle of this office at 566-6571.

William F. Long Jr.

WILLIAM F. LONG, JR.

Attachments:
As stated

Internal Revenue Service

memorandum

CC:GLS-995-85
Br3:BMintz

date:

to: Director, Fresno Service Center

from: Acting Director, General Legal Services Division CC:GLS

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subject: Strategic Initiative on Child Care

You asked our opinion on whether the IRS can properly use its appropriated funds to finance the establishment and maintenance of day care centers for the use of IRS employees. Included in establishing such centers would be the cost of renovating existing or acquired space in order to conform it to its intended use, purchasing needed equipment, and providing IRS employee assistance in overseeing the establishment of the centers. Once established, in order to maintain the center, it is your intent to dedicate space within the building to its continued use as well as to provide utilities and phones without charge. Our discussion follows.

Necessary Expenses

Generally, Government agencies may spend appropriated funds allocated to them for any and all expenses "necessary" or incident to carrying out the stated purpose of their appropriations. See e.g., 50 Comp. Gen. 534 (1971); 38 Comp. Gen. 782, 785 (1959); 29 Comp. Gen. 419 (1950). Any other use of appropriated funds in considered unnecessary and not permitted.

To determine if an expenditure is "necessary" it is usually subjected to a three-prong test. First and most crucial is that the expenditure anticipated must bear a logical relationship to the appropriation category to be charged and that if allowed would advance the purpose of the appropriations. Second, the expenditure must not be otherwise prohibited by law and third, the expenditure must not be otherwise provided for in another appropriation. Applying this test to the instant situation, if, an agency head such as the Commissioner or his delegate determined that funding a day care center was so interrelated to the recruiting, retaining and/or productivity of its employees that it was necessary for the efficient operation of his or her agency, then all costs associated therewith would be considered necessary expenses and payable out of appropriated funds. See GAO Decision B-39772-O.M. (July 16, 1976 unpub. attached), wherein GAO addressed the possibility of providing free space and services to a day care center to be established in the GAO facility. The GAO concluded that if the Comptroller General determined that a day care center was necessary to the efficient execution of the functions of GAO, that no legal impediment existed that would prevent the use of appropriated funds to defray the costs involved therewith. Note, however, that the GAO also recommended that, given the controversial nature

of such a decision, that the cognizant Appropriations Committee of Congress be informed of such decision and kept apprised of any significant capital expenditure related thereto.

It is interesting to note that GAO did not conclude in 1976 that day care was necessary to its operations because it deemed there would be insufficient employee support. However, currently GAO is in the process of reevaluating its needs and a decision is anticipated with the next few months on whether the support currently exists.

The Internal Revenue Service is not bound by the decisions of other agencies as to the necessity of day care centers in their facilities. Rather the Commissioner or his delegate could conclude such conclusion that day care was necessary to IRS functioning and could justify such conclusion by, for instance, demonstrating how the productivity of IRS employees would be improved by the availability of day care centers or how the centers would lessen the rate of turnover the absenteeism among employees, particularly women. Moreover, the Commissioner could argue that the presence of a day care center would improve IRS' recruiting effort vis-a-vis minorities and women thereby assisting the IRS in carrying out its obligation under its affirmative action mandate. See 29 CFR 1613.203.

Once an agency head like the Commissioner or his delegate decided that day care centers are necessary for the efficient operation of the Service, the Comptroller General normally will support such decision and usually will not substitute his own judgment for that of an agency head. 18 Comp. Gen. 285 (1938). Naturally, in the absence of such necessary determination and justification, appropriated funds would not be available for the purpose of funding a day care center.

Assuming that the Commissioner were to determine that day care centers were necessary to the operation of the Service, details of who was to run them, what fees would be charged, the disposition thereof, etc. would need to be addressed. Further a determination of necessity is not tantamount to a determination that appropriated funds are available for such purpose.

If a determination of necessity is not reached appropriated funds may not be used, however, two alternative means exist that can be used to establish day care centers in IRS locales.

Enabling Legislation

Several Government agencies currently have day care centers operating within their facilities. Those that are financed in any way by the agencies involved are done so under the auspices of specific legislation.

For instance the legislation that authorized the Department of Housing and Urban Development (HUD) to establish its day care center, 42, USC 3535, provided the authority for HUD to use its appropriated funds to establish, equip and operate its center as well as to charge and retain fees to offset the costs involved therein. Further, it allowed the expenditure of funds up to a specific amount for unreimbursed start-up costs. Health and Human Services' (HHS) provision, 20 USC 2564, is not as liberal. While it provides for the establishment of day care centers in a similar fashion to HUD's it calls for the reimbursement of the costs involved over a specific period.

IRS could, if it wished, attempt to seek its own authorizing legislation modeled on either provision detailed above or drafted originally to meet IRS' unique needs. We are available to assist in such endeavor. Once drafter the legislation would be submitted to Congress for passage. Once passed the necessity of the expenditure is established.

Public Buildings Cooperative Use Act of 1976

A third alternative that would permit day care centers to be located in IRS facilities is the Public Building Cooperative Use Act of 1976 (40 USC 490, 601(a) et. seq) [hereinafter "Act"]. While under the Act Government agencies are encouraged to locate commercial, cultural, educational, and recreational facilities and activities within public buildings, the activities are expected to pay for the use thereof thereby establishing a "viable partnership between the Federal Government and various sectors of the community", H. Rep. No. 94-1584 (I) 94th Cong., 2d Sess. 5 (1976) accompanying H.R. 15134, the House version of the Act. Moreover, the rental rate to be charged is to be equivalent to the prevailing commercial rate for comparable space devoted to similar purposes in the vicinity of the public building. 40 USC 490(a)16.

Naturally, any day care center established on such basis (a commercial activity) would be expected to furnish all of its own fees and start-up costs, utilities, etc. Examples of sources of funds are the Union, private individuals and the United Way. This alternative while feasible is the least satisfactory because the rental charges involved would necessitate the day care center charging a higher user fee for the service then the other two alternatives.

Conclusion

In our opinion the IRS could in theory use its appropriated funds to fund a day care center subject to a high level determination of the propriety of so doing and subject to their availability. However, we wish

to stress the controversial nature of reaching such conclusion and recommend that even if an immediate decision is reached to fund day care centers that consideration be given to eventually seeking enabling legislation.

If you have any questions, please contact Barbara Mintz of my division at 566-6571.

WILLIAM F. LONG, JR.

EXHIBIT E

SAMPLE STATEMENT OF WORK

Description/Work Statement

The Contractor within 20 days of contract award will submit a Quality Assurance Plan to insure goals and timetables for implementation of the child care center are met.

The Contractor, as an independent Contractor and not an agent of the Government, shall provide the professional advice and expertise to establish the child care center. The consultant shall make every effort to ensure all contractual obligation are timely fulfilled to ensure a fully operational child care center by (date).

The Contractor should be available for consultation and assistance as needed at the discretion of the child care coordinator and/or child care committee. Consultation will be primarily at the (site of the center or IRS offices) and may in limited circumstances, extend to the National Office in Washington, DC. The Contractor shall have a maximum of one (1) representative available for consultation each government work day between the hours of 8:00 a.m. sand 4:30 p.m.

All deliverables will be provided in narrative form unless otherwise indicated. Types of deliverables include information and recommendations on various child care philosophies, and projected fee scales based on a child's educational level. All deliverables are subject to the approval of the IRS.

Progress Reports

The Contractor shall provide progress reports to the child care committee every two weeks until the center is full operational. The reports should highlight work accomplished, indicate progress in comparison to the workplan schedule, and specify and difficulties encountered or foreseen. Each report should contain an executive summary that highlights the significant information presented in the report. These reports can be integrated with the scheduled task reports.

Briefings

The Contractor shall conduct formal or informal briefings with the child care coordinator and/or child care committee. The briefings will be held at the IRS office. Either party may request additional briefings when circumstances warrant, and will give at least three (3) working days' notice when such briefings are required. A formal briefing is also required with delivery of the final report.

Workplan

The Contractor shall provide a workplan outlining completion dates for all significant actions necessary to establish an operation.

Deliverable

The Contractor will provide the workplan within fifteen (15) days of the contract award. The IRS will respond with approval/disapproval with ten (10) days.

Budget

The Contractor shall develop a comprehensive budget and cost analysis for all costs associated with the initial start-up of the child care center. The budget and cost analysis shall include, but not be limited to, the following:

- the interior and exterior space construction or renovation
- classroom equipment and supplies
- outdoor play equipment
- office equipment and supplies
- kitchen equipment
- staff recruitment and training
- insurance
- legal and licensing fees
- minimum amount for initial operating expenses

Deliverable

The Contractor shall provide a written outline budget plan with a narrative cost analysis within thirty (30) days of contract award. The child care coordinator will forward the proposed budget plan and analysis to the IRS National Office for approval. The Contractor shall proceed with the project while awaiting budget approval.

Space Design

The Contractor will work with the child care coordinator, child care committee, Facilities Management staff and GSA, in designing interior and exterior space plans which satisfy all state and local fire and building codes. The design must also meet minimum state ratio requirements with respect to square footage per child, both indoors and outdoors. The contractor will advise IRS staff members of appropriate items such as carpeting, paint, and wall coverings. The contractor will ensure that all plumbing and electrical needs are identified and meet necessary federal, state, and local requirements.

Deliverable

The Contractor, working through the Facilities Management Branch and the child care committee, shall provide finished floor plans and construction drawings for interior and exterior space within 30 days of contact award.

Equipment and Supplies

The Contractor will identify all equipment and supplies necessary for the successful operation of a child care center. Equipment and supplies should be selected through GSA catalogs when possible. Should equipment and supplies not be available through GSA catalogs, contractor will provide a minimum of three (3) vendors for the recommended equipment and supplies. Equipment will be of the highest available quality while remaining within safety and budgetary guidelines. The recommendations should included, but are not limited to, toys and playground equipment. All equipment must meet or exceed federal, state, and local safety requirements. IRS will procure the necessary items based on the contractors submissions.

Deliverables

The Contractor will provide projected equipment and supply needs and their associated costs for submission to National Office with the budget within 30 days of contract award. The contractor will provide alternatives for selection within 30 days of National Office budget approval. The child care committee/coordinator will make the final decisions on purchases based on contractor's information.

Legal Issues

The Contractor shall identify and advise on actions necessary to satisfy federal, state or local legal issues involved in establishing a child care center. The legal issues the contractor will advise on include, but are not limited to, all licensing requirements; tax code requirements for recordkeeping, establishment of a corporation or tax exempt organization, by-laws; and insurance requirements such as comprehensive general liability insurance, and student accident insurance, workers compensation, bonding, fire insurance, and personal liability insurance.

Deliverable

The Contractor shall identify and advise on all necessary legal issues to ensure timely completion of the child care center by (date). The contractor shall provide an initial plan for accomplishment within 30 days of contract award. The child care committee/coordinator will provide a response to the plan within 10 days.

Organizing a Board of Directors

The Contractor shall assist the coordinator in organizing a board of directors, comprised of parents, an NTEU representative, and an IRS management representative.

Administrative Issues

The Contractor shall provide recommendations to the child care coordinator for all administrative duties necessary to establish a child care center. Time frames for completion should be included when necessary. The contractor shall provide recommendations concerning administrative responsibilities which include but not limited to:

- developing necessary forms and administrative record systems
- determining alternative educational and other program philosophies
- planning curriculum and activities
- setting admission policies
- setting operation policies
- setting personnel policies
- developing a detailed fund raising program
- developing a sound fee policy
- planning a sound substantive operating budget
- arranging food services
- developing effective marking methods
- developing comprehensive staff health and benefit plans
- devising bookkeeping and accounting systems
- developing methods to promote parent involvement
- developing methods to handle employer-center relations
- developing parent handbook

Deliverable

The Contractor shall identify and advise on all necessary administrative issues to ensure timely completion of the child care center by (date). The contractor shall provide a detailed initial plan for accomplishment within 45 days of contract award. the child care committee/coordinator will provide a response to the plan with 10 days.

Personnel Requirements

The Contractor shall assist in recruiting, interviewing, and recommending actions for hiring a qualified director. The director should meet or exceed all federal, state, or local licensing requirements. The director should have a minimum of one experience in running a medium to large state approved child care center. References should be provide.

The Contractor shall advise the director and the board of directors on recruiting, hiring, training, and developing a qualified, competent, and dependable staff. The staff should meet or exceed all federal, state, and local qualification requirements.

Deliverable

The Contractor shall assist in completing all personnel requirements necessary to operate a child care center by (date). The contractor shall provide a detailed initial plan for accomplishment within 90 days of contract award. The child care committee/coordinator will provide a response within 10 days.

Deliverable Final Report

The Contractor will provide a comprehensive detailed written evaluation of the child care center within 30 days after opening of the center. The report should include an executive summary that highlights the significant information presented in the report. The report should cover implementation stages and all work accomplished during the project. Contractor is required to provide a formal briefing of the final report.

EXHIBIT F

BY-LAWS

OF

THE NATIONAL OFFICE CHILD DEVELOPMENT CENTER, INC.

ARTICLE 1 - OFFICES

Section 1.1 - Registered Office

The registered office of the corporation shall be located at 1800 M Street, N.W., Washington, D.C. or at such other place in the District of Columbia as the Board of Directors may determine.

Section 1.2 - Principal and Other Offices

The principal office of the corporation shall be located at 1111 Constitution Avenue, Washington, D.C. 20224 or at such other place in the District of Columbia as the Board of Directors may determine.

The corporation may also have offices at such other places within the District of Columbia as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE 2 - DIRECTORS

Section 2.1 - Qualifications

Each director shall be a resident of the Washington, D.C. Metropolitan Area. Each director may, but need not, be a United States citizen.

Section 2.2 - Number and Term

The number of directors constituting the Board of Directors shall be not less than five (5) nor more than seven (7). Directors other than the initial directors shall hold office for a term of one (1) year and until their successors are elected and qualified. The number of directors may be increased or decreased from time to time by amendment of these By-Laws, but shall never be less than five (5).

Section 2.3 - Election

The members of the Board of Directors of the Corporation shall be elected by the vote of a majority of the entire Board of Directors then in office at the annual meeting thereof or at a special meeting called for that purpose.

Section 2.4 - Vacancies

Any vacancy occurring on the Board of Directors may be filled by action of a majority of the entire Board of Directors then serving.

Section 2.5 - Resignation

Any director may resign at any time by giving written notice to the President of the Board of Directors. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the President of the Board of Directors.

Section 2.6 - Removal

Any director may be removed, with or without cause, at any time, by the affirmative vote of a majority of the entire Board of Directors at any meeting thereof.

Section 2.7 - Compensation

No stated salary shall be paid to directors, as such, for their services, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for any director for attendance at each meeting of the Board of Directors; provided, however, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 2.8 - Contracts

The directors and officers of the corporation may be interested directly or indirectly in any contract relating to or incidental to the operations conducted by the corporation, and may freely make contracts, enter transactions, or otherwise act for and on behalf of the corporation, notwithstanding that they may also be acting as individuals, or as trustees of trusts, as agents for other persons or corporations, or may be interested in the same manner as shareholders, directors, or otherwise; provided, however, that any contract, transaction or act on behalf of the corporation in a matter in which the directors or officers are personally interested as shareholder, trustee, or otherwise,

shall be at arms length and shall not be violative of the proscriptions of the Articles of Incorporation against the corporation's use or application of its funds for private benefit; provided further that no contract, transaction or act shall be taken on behalf of the corporation if such contract, transaction or act is a prohibited transaction or would result in the denial of the tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding provisions of any subsequent Federal tax laws, and regulations issued thereunder. In no event, however, shall any person or other entity dealing with the directors or officers of the corporation be obligated to inquire into the authority of such directors or others to enter into and to consummate any contract, transaction, or other action.

Section 2.9 - Duties and Powers

The business affairs of the corporation shall be managed by its Board of Directors, which may exercise all such powers of the corporation and do all such lawful acts as are not by statute or by the Articles of Incorporation or by these By-Laws, proscribed. The Board of Directors may create and appoint committees to assist the directors in the conduct of the corporation's affairs.

Section 2.10 - Records of Corporation

The directors may keep the books of the corporation, except such as are required by law to be kept within the Distrct of Columbia or outside of the District of Columbia, at such place or places as they may from time to time determine.

The Board of Directors shall maintain at the corporation's registered office or principal office in the District of Columbia a record of the names and addresses of all members and officers of the Board entitled to vote. All books and records of the corporation may be inspected by any director, his/her agent or attorney, for any proper purpose at any reasonable time.

ARTICLE 3 - MEETINGS OF THE BOARD OF DIRECTORS

Section 3.1 - Place of Board of Directors' Meetings

Meetings of the Board of Directors, regular or special, may be held either within or without the District of Columbia.

Section 3.2 - First Meeting of Board of Directors

The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the Articles of Incorporation; or the Board of Directors may convene at such place and time as shall be fixed by the consent of all the directors.

Section 3.3 - Regular Meetings of Board of Directors

Regular meetings of the Board of Directors may be held upon fourteen (14) days notice, and at such time and at such place as shall from time to time be determined by the Board of Directors.

Section 3.4 - Special Meetings of Board of Directors

Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each director, either personally or by mail or by telephone; special meetings shall be called by the President in like manner and on like notice on the written request of two directors.

Section 3.5 - Attendance, Waiver of Notice

Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meetings.

Section 3.6 - Quorum and Action

A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business. At any duly held meeting at which a quorum is present, the

affirmative vote of two-thirds of the directors present shall be the act of the Board of Directors on any question, except where the vote of a greater number is required by these By-Laws, by the Articles of Incorporation, or by statute.

Section 3.7 - Vote by Proxy

A director entitled to vote in person can vote by proxy provided that the director signs a written appointment of such proxy to another director which shall be valid for no more than two (2) months and shall become effective when received by the Secretary or other officer or agent authorized to tabulate votes. An appointment of proxy shall be revocable by the director assigning the proxy unless the appointment states that it is irrevocable and the appointment is coupled with an interest.

Section 3.8 - Action Without a Meeting

Any action required to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent, in writing, setting forth the action to be taken, shall be signed before such action by all of the directors entitled to vote with respect to the subject matter thereof.

Section 3.9 - Presumption of Assent

A director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to

the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the person acting as the Secretary of the meeting prior to the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right of dissent shall not apply to a director voting in favor of such action being taken.

Section 3.10 - President

At all meetings of the Board of Directors, the President shall preside.

ARTICLE 4 - EXECUTIVE COMMITTEE

Section 4.1 - Appointment

The Board of Directors, by resolution adopted by a majority of the full board, shall designate three (3) or more of its members to constitute an Executive Committee. Such resolution may further provide that any member of the Board of Directors attending any regular or special meeting of the Executive Committee, whether with or without prior notice, shall be considered a member of the Executive Committee for any and all purposes of that meeting only, and shall have a full and equal voice and vote in all matter then considered and resolved by the Executive Committee at such meeting. The designation of such committee and the delegation thereto of authority shall not

operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

Section 4.2 - Authority

The Executive Committee, when the Board of Directors is not in session, shall have and may exercise all of the authority of the Board of Directors except to the extent, if any, that such authority shall be limited by the resolution appointing the Executive Committee and except also that the Executive Committee shall not have the authority of the Board of Directors in reference to amending the Articles of Incorporation, adopting a plan of merger or consolidation, arranging for the sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all of the property and assets of the corporation, terminating any contract entered into by the corporation, or effecting the voluntary dissolution of the corporation or the revocation of voluntary dissolution proceedings.

Section 4.3 - Tenure and Qualifications

Each member of the Executive Committee shall hold office until his/her successor is designated as a member of the Executive Committee and is elected and qualified, or until he/she has resigned, or has been removed in the manner hereinafter provided.

Section 4.4 - Meetings

The Executive Committee may designate by resolution the times and places of regular meetings and such meetings may be held without further notice. Special meetings of the Executive Committee may be called by any member thereof upon not less than twenty-four (24) hours' notice, in writing, by delivery, telegram or mail, stating the place, date and hour of the meeting, which notice shall be given to each member of the Executive Committee and the Board of Directors. Any member of the Executive Committee may waive notice of any meeting of the Committee which he/she attends in person. The notice of a meeting of the Executive Committee need not state the business proposed to be transacted at the meeting. Notice to directors and committee members may also be given by telephone.

Section 4.5 - Quorum

A majority of the members of the Executive Committee designated in the resolution creating the Executive Committee shall constitute a quorum for the transaction of business at any meeting thereof and action of the Executive Committee must be authorized by the affirmative vote of two-thirds (but in any event no fewer than two (2)) of the members present at a meeting at which a quorum is present.

Section 4.6 - Action Without a Meeting

Any action that may be taken by the Executive Committee at a meeting may be taken without a meeting if a consent, in writing, setting forth the action to be taken, shall be signed before such action by all of the members of the Executive Committee.

Section 4.7 - Vacancies

Any vacancy in the Executive Committee may be filled by a resolution adopted by a majority of the full Board of Directors.

Section 4.8 - Resignations and Removal

Any member of the Executive Committee may be removed at any time with or without cause by resolution adopted by a majority of the full Board of Directors. Any member of the Executive Committee may resign from the Executive Committee at any time by giving written notice to the President of the Board of Directors of the corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.9 - Procedure

The Executive Committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these By-Laws.

ARTICLE 5 - NOTICES

Section 5.1 - Notice

Whenever, under the provisions of statute or of the Articles of Incorporation or of these By-Laws, notice is required to be given to any director or committee member, it shall not be construed to mean personal notice, but such notice may be given in writing, by delivery, telegram or mail, addressed to such director or committee member, at his/her address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail or delivered to the courier or telegram office. Notice to directors or commttee members may also be given by telephone.

Section 5.2 - Waiver of Notice

Whenever any notice whatever is required to be given under the provisions of statute or under the provisions of the Articles of Incorporation or these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE 6 - OFFICERS

Section 6.1 - Executive Officers

The executive officers of the corporation shall be chosen by a majority vote of the full Board of Directors at the

annual meeting, and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer.

Section 6.2 - Qualifications

Each officer must be a member of the Board of Directors. Each officer may, but need not, be a citizen of the United States.

Section 6.3 - Term of Office

Each officer shall hold office for one (1) year and until his/her successor shall have been elected and qualified or until his/her death, resignation or removal.

Section 6.4 - Removal

Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by an affirmative vote of a majority of the Board of Directors.

Section 6.5 - Resignation

Any officer may resign at any time by giving written notice of such resignation to the President of the Board of Directors. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the President of the Board of Directors, and the acceptance of such resignation shall not be necessary to make it effective.

Section 6.6 - Vacancy

A vacancy in any office may be filled by a majority vote of the Board of Directors at a special meeting called for that purpose.

Section 6.7 - The President

The President shall have general and active management of the business, subject to the direction of the Board of Directors, and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, as directed by the Board of Directors, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

Section 6.8 - Vice-President

The Vice-President (or, if more than one Vice-President is elected, the Senior Vice-President) shall, in the absence or disability of the President, perform the duties and exercise the powers of the President. Any Vice-President shall perform such duties and have such powers as the Board of Directors may from time to time prescribe.

Section 6.9 - Secretary

The Secretary shall attend all meetings of the Board of Directors and record all the proceedings of the meetings of the Board of Directors in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall have custody of the corporate seal of the corporation and shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his/her signature. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his/her signature.

Section 6.10 - Treasurer

The Treasurer shall have custody of all funds, property, and securities of the corporation, subject to such regulations as may be imposed by the Board of Directors. He/she may be required to give bond for faithful performance of his/her duties, in such amount and with such sureties as the Board of Directors may require. When necessary and proper, he/she may endorse on behalf of the corporation, for collection, checks, notes and other obligations, and shall deposit the same to the credit of the corporation at such bank or banks, or depository as the Board of Directors may designate. He/she shall sign all receipts and vouchers and, together with such other officer or officers, if

any, that shall be designated by the Board of Directors, he/she shall sign all checks, and all bills of exchange and promissory notes issued by the corporation, except in cases where the signing and execution thereof shall be expressed by the Board of Directors or by these By-Laws to some other officer or agent of the corporation. He/she shall make such payments as may be necessary or proper to be made on behalf of the corporation. He/she shall enter regularly on the books of the corporation to be kept by him/her full and accurate accounts of all monies and obligations received and paid or incurred by him/her for or on account of the corporation, and he/she shall exhibit such books at all reasonable times to any director on application at the principal offices of the corporation.

Section 6.11 - Compensation

The compensation, if any, of all officers shall be fixed by the Board of Directors, and the Board of Directors has the authority, by majority vote, to reimburse expenses and to establish reasonable compensation of any director for services to the corporation in any capacity.

ARTICLE 7 - CORPORATE RELATIONSHIPS

Section 7.1 - Sharing of Facilities

With the approval of the Board of Directors and subject to its continuing oversight and review, the officers of the corporation may make arrangements on behalf of the corporation

with any other corporation or entity for office space and facilities on a cost-sharing or rental basis, provided that such arrangements are made in accordance with prevailing commercial terms and further provided that the resources and facilities of the corporation are at no time made available to or for the benefit of any other corporation or entity for less than adequate consideration, or for reasons or purposes other than those which are consistent with the exempt purposes of the corporation.

ARTICLE 8 - AGENTS AND REPRESENTATIVES

Section 8.1 - Agents and Representatives

The Board of Directors may appoint such other agents and representatives of the corporation with such powers and to perform such acts or duties on behalf of the corporation as the Board of Directors may see fit, so far as may be consistent with these By-Laws, to the extent authorized or permitted by law.

ARTICLE 9 - CONTRACTS

Section 9.1 - Authorization

The Board of Directors, except as in these By-Laws is otherwise provided, may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to a specific instance, and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the corpora-

tion by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or for any amount.

Section 9.2 - Loans

No loans shall be contracted on behalf of the corporation and no evidences of indebtednees shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances. No loans shall be made by the corporation to any of its officers or directors.

Section 9.3 - Deposits

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE 10 - ADVISORY COMMITTEE

Section 10.1 - Appointment, Terms, and Duties

The Board of Directors may appoint from its members or from among such persons as the Board may see fit, one or more advisory committees, and, at any time, may appoint additional members thereto. The members of any such committee shall serve during the pleasure of the Board of Directors. Such advisory committee shall advise with and aid the officers of the corporation in all matters designated by the Board of Directors. Each such committee may, subject to the approval of the Board of

Directors, prescribe rules and regulations for the call and conduct of meetings, and other matters relating to its procedure. Members of any advisory committee shall not receive any stated salary for their services, as such, but by resolution of the Board of Directors, a fixed reasonable sum for expenses or attendance, if any, or both, may be allowed for attendance at each regular or special meeting of such committee. The Board of Directors shall have the power in its discretion to contract for and to pay any member of an advisory committee, rendering unusual or exceptional services to the corporation, special compensation appropriate to the value of those services.

ARTICLE 11 - FISCAL YEAR

Section 11.1 - Dates

The fiscal year of the corporation shall commence on July 1 of each year (except its first year of operation, for which the fiscal year shall begin on the date of incorporation) and shall end on June 30 of each year.

ARTICLE 12

PROHIBITION AGAINST SHARING CORPORATION EARNINGS

Section 12.1 - Prohibition

No director, officer, or employee of, or member of a committee of, or any person connected with the corporation or any other private individual shall receive at any time any of the net earnings or profits from the operations of the corporation; pro-

vided, however, that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the corporation and affecting any of its purposes as shall be fixed by the Board of Directors; and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the corporation. All directors of the corporation shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the corporation, whether voluntary or involuntary, the assets of the corporation, after all debts have been satisfied, then remaining in the hands of the Board of Directors, shall be distributed, transferred, conveyed, delivered, and paid over, in such amount as the Board of Directors may determine or as may be determined by a Court of competent jurisdiction upon application of the Board of Directors, exclusively to charitable, educational or scientific organizations which would then qualify under the provisions of Sections 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding provisions of any subsequent Federal tax laws.

ARTICLE 13 - INVESTMENTS

Section 13.1 - Discretion

The corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, to invest and reinvest any funds held by it according to the judgment of the Board of Directors without being restricted

to the classes of investments which a director is or may hereafter be permitted by law to make or any similar restriction; provided, however, that no action shall be taken by or on behalf of the corporation if such action would result in the denial of its tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding provision of any subsequent Federal tax laws.

Section 13.2 - Voting Rights

Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the corporation to vote either in person or by proxy, at any meeting of the shareholders of any corporation in which this corporation may hold shares, and at any such meeting may possess and exercise all the rights and powers incident to ownership of such shares which, as owner thereof, the corporation might have possessed and exercised if present. The Board of Directors may confer like powers upon any other person and they may revoke any such power as granted at their pleasure.

ARTICLE 14 - AMENDMENTS

Section 14.1 - Articles of Incorporation

Any amendment to the Articles of Incorporation shall be adopted at a meeting of the Board of Directors upon receiving the vote of at least two-thirds of the directors then in office, provided, however, that such action is proposed at a regular or

special meeting of the Board and adopted at a subsequent regular or special meeting, except as otherwise provided by law. The Board of Directors may adopt one or more amendments at any o e meeting.

Section 14.2 - By-Laws

The Board of Directors shall have power to make, alter, amend and repeal the By-Laws of the corporation by affirmative vote of a majority of the Board, provided, however, that such action is proposed at a regular or special meeting of the Board and adopted at a subsequent regular or special meeting, except as otherwise provided by law. The Board of Directors may adopt one or more amendments at any one meeting.

ARTICLE 15 - EXEMPT ACTIVITIES

Section 15.1 - Limitations

Notwithstanding any other provision in these By-Laws, no director, officer, employee or representative of this corporation shall take any action or carry on any activities by or on behalf of the corporation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any corresponding provisions of any subsequent Federal tax laws.

Section 15.2 - Nondiscriminatory Policy as to Students

The pre-school educational center operated by the corporation will accord to children of any race, sex, color,

national and ethnic origin enrolled in the center all of the rights, privileges, programs and activities generally provided or made available to attendees at the center and will not discriminate on the basis of race in administration of its educational policies, admissions policies, financial assistance programs, and athletic and other center-administered programs.

ARTICLE 16 - INDEMNIFICATION

Section 16.1 - Authority to Indemnify

The corporation may indemnify an individual, made a party to a proceeding because he/she is or was a director of the corporation, against liability incurred in the proceeding if (1) he/she conducted himself in good faith; (2) he/she believed, in the case of conduct in his/hers official capacity with the corporation, that his/hers conduct was in the best interests of the corporation, and in all other cases, that his/hers conduct was at least not opposed to the best interests of the corporation; and (3) in the case of any criminal proceeding, he/she had no reasonable cause to believe that his conduct was unlawful.

The corporation shall not indemnify a director in connection with a proceeding, by or in the right of the corporation, in which the director was adjudged liable to the corporation; or in connection with any other proceeding charging improper personal benefit to him/her, whether or not involving action in his/her official capacity, in which he/she was adjudged

liable on the basis that personal benefit was improperly received by him/her.

Section 16.2 - Reasonable Expenses

Indemnification permitted under this Article in connection with a proceeding by or in the right of the corporation is limited to expenses that are incurred in connection with the proceeding and determined to be reasonable by a majority vote of the full board.

EXHIBIT G

ARTICLES OF INCORPORATION

We, the undersigned natural persons of the age eighteen (18) years or more, acting as incorporators of the above-named corporation, adopt the following Articles of Incorporation of such corporation pursuant to Chapter 5 of Title 29 of the Code of the District of Columbia, the District of Columbia Nonpropfit Corporation Act:

FIRST: The name of the corporation is ("the Corporation").

SECOND: The period of its duration is perpetual.

THIRD: The purposes for which the Corporation is organized are as follows:

A. To operate exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

B. To lessen the burdens of government by providing on-site child development services primarily to Internal Revenue Service (IR) employees;

C. To establish an educational child development center designed to serve primarily the needs of children or Internal Revenue Service (IRS) employees;

D. To offer a year-round high-quality educational program with enrollment available, without regard to race, religion, sex, color, or national or ethnic origin, on a priority basis to children of Internal Revenue Service (IRS) employees and on a space available basis to children of members of the general public; and

E. To engage in any and all lawful activities incidental to the foregoing purposes, except as specifically restricted herein.

FOURTH: The Corporation shall have no members.

FIFTH: The Corporation shall issue no capital stock.

SIXTH: Except for the initial Board of Directors, whose names are set forth in these Articles, the number of directors of the Corporation shall be determined in accordance with the By-laws. Other than the initial Board of Directors, the directors shall be elected at an annual meeting of the Board of Directors, or at a special meeting called for such purpose, by the vote of a majority of directors then in office, and each director shall hold office for a term of one (1) year and until his/her successor is elected and qualified, pursuant to the By-laws.

SEVENTH: Provisions for the regulation of the internal affairs of the Corporation, except as provided in these Articles, shall be determined and fixed by the By-laws as adopted by the Board of Directors. If the By-laws so provide, the Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, designate three (3) or more of the directors to serve as a committee, which, to the extent provided in such resolution or resolutions and consistent with law, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it.

At all times, and notwithstanding merger, consolidation, reorganization, termination, dissolution or winding up of the corporation, voluntarily or involuntarily, or by operation of law or any other provision hereof:

(1) The Corporation shall neither have nor exercise any power, nor shall if directly or indirectly engage in any activity that would (a) prevent it from obtaining an exemption from Federal income taxation as a corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (b) cause it to loss such exempt status.

(2) The Corporation shall not be operated for the purpose of carrying on a trade or business for profit.

(3) No part of the income of the Corporation inure to the benefit of any trustee, director, or officer of the Corporation or any private individual, except that reasonable compensation may be paid for services rendered on behalf of the Corporation, and no trustee, director or officer of the Corporation or any private individual shall be entitled to share in any distribution of any of the assests of the Corporation upon its dissolution.

(4) No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attemptin to influence legislation, except as may otherwise be permitted in accordance with an election pursuant to Section 501(h) of the Internal Revenue Code of 1986, as amended; not shall it in any manner or to any extent participate in or intervene in (including the publishing or distribution of statements)

any political campaign on behalf of any candidate for public office; nor shall the Corporation engage in any activities that are unlawful under applicable Federal, state or local laws.

(5) If for any period the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Cod of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws, then during such period, the Corporation shall be subject to the following restrictions and prohibitions:

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal Tax laws.

(b) The Corporation shall not engage in any act of self-dealing as defined in Section 4941(b) of the Internal Revenue Code of 1986, as amended or corresponding provisions of any subsequent Federal tax laws.

(c) The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(d) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(e) The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws.

(6) Upon the dissolution of the Corporation, the Board of Directions shall, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation, distribute all assets of the Corporation exclusively to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes, as shall at such time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent Federal tax laws, as the Board of Directors shall determine, pursuant to a plan of distribution.

EIGHTH: The address, including street name and number, of the initial registered office of the corporation is (address) and the name of the initial registered agent of the Corporation at such address is (name) who is a resident of the District of Columbia.

NINTH: The number of directors constituting the initial Board of Directors is (odd number), and the names and address, including street name and number, of such persons who are to serve as the initial directors until the first annual meeting or until their successors are elected and qualified are:

NAME ADDRESS

(List Names and Addresses of each Board Member)

best copy available

TENTH: The named and address, including street name and number, of each incorporator is:

NAME	ADDRESS

(List Names and addresses of all incorporators)

EXHIBIT H

APPENDIXES

APPENDIX 1.—STATUTORY AUTHORITIES FOR CHILD CARE IN FEDERAL BUILDINGS

CHILD CARE CENTERS

Pub. L. 99-591, § 101(m) [Ti. VI, § 616], Oct. 30, 1986; 100 Stat. 3341-331; 40 U.S.C. 490b [22]

SEC. 616. (a) If any individual or entity which provides or proposes to provide child care services for Federal employees applies to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such individual or entity provides or proposes to provide such service, such officer or agency may allot space in such a building to such individual or entity if—

(1) such space is available;

(2) such officer or agency determines that such space will be used to provide child care services to a group of individuals of whom at least 50 percent are Federal employees; and

(3) such officer or agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

(b)(1) If an officer or agency allots space to an individual or entity under subsection (a), such space may be provided to such individual or entity without charge for rent or services.

(2) If there is an agreement for the payment of costs associated with the provision of space allotted under subsection (a) or services provided in connection with such space, nothing in title 31, United States Code, or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

(3) For the purpose of this section, the term "services" includes the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems).

[22] A similar provision was contained in section 139 of P.L. 99-190, the Continuing Appropriations Act signed December 19, 1985.

PUBLIC BUILDINGS COOPERATIVE USE ACT OF 1976

Pub. L. 94-541, Oct. 18, 1976, 90 Stat. 2505, 40 U.S.C. 601a, 612a

TITLE I

SEC. 101. This title may be cited as the "Public Buildings Cooperative Use Act of 1976".

SEC. 102. (a) In order to carry out his duties under this title and under any other authority with respect to constructing, operating, maintaining, altering, and otherwise managing or acquiring space necessary for the accommodation of Federal agencies and to accomplish the purposes of this title, the Administrator shall—

(1) acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives;

(2) encourage the location of commercial, cultural, educational, and recreational facilities and activities within public buildings;

(3) provide and maintain space, facilities, and activities, to the extent practicable, which encourage public access to and stimulate public pedestrian traffic around, into, and through public buildings, permitting cooperative improvements to and uses of the area between the building and the street, so that such activities complement and supplement commercial, cultural, educational, and recreational resources in the neighborhood of public buildings; and

(4) encourage the public use of public buildings for cultural, educational, and recreational activities.

(b) In carrying out his duties under subsection (a) of this section, the Administrator shall consult with Governors, areawide agencies established pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 and title IV of the Intergovernmental Cooperation Act of 1968, and chief executive officers of those units of general local government in each area served by an existing or proposed public building, and shall solicit the comments of such other community leaders and members of the general public as he deems appropriate.

SEC. 103. [Amends sections 7 and 12 of the Public Buildings Act of 1959. See above.]

SEC. 104. [Amends section 210(a) and 210(e) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490 (a) and (e)). See Chapter I.]

SEC. 105. As used in this title and in the amendments made by this title—

(1) The term "Administrator" means the Administrator of General Services.

(2) The terms "public building" and "Federal agency" have the same meaning as is given them in the Public Buildings Act of 1959.

(3) The term "unit of general local government" means any city, county, town, parish, village, or other general purpose political subdivision of a State.

(4) The term "historical, architectural, or cultural significance" includes, but is not limited to, buildings listed or eligible to be

listed on the National Register established under section 101 of the Act of October 15, 1966 (16 U.S.C. 470a).

(5) The term "commercial activities" includes, but is not limited to, the operations of restaurants, food stores, craft stores, dry goods stores, financial institutions, and display facilities.

(6) The term "cultural activities" includes, but is not limited to, film, dramatic, dance, and musical presentations, and fine art exhibits, whether or not such activities are intended to make a profit.

(7) The term "educational activities" includes, but is not limited to, the operations of libraries, schools, day care centers, laboratories, and lecture and demonstration facilities.

(8) The term "recreational activities" includes, but is not limited to, the operations of gymnasiums and related facilities.

EXHIBIT I

Liability Insurance Guide for Child Care Centers*

by the Child Care Law Center

You are preparing lunch for the children in your program and you accidentally spill boiling water on a child standing near the stove. The child's hands are badly burned.

Child care centers constantly face situations where there is exposure to civil liability. It is therefore important for you to take preventative measures to shield yourself and your program from possible liability. Maintaining a good safety program, following applicable licensing requirements, and purchasing insurance for your program are important preventative measures that should be taken to protect yourself and your program.

This article will discuss liability insurance for child care centers: how it works, what types of coverages are available, and how to decide what coverage is necessary for your program. Some states have laws which require child care centers to carry liability insurance in specific forms and amounts. It is important to find out if your particular state has such a law in effect.

General Liability Insurance

Child care workers have the duty to act with reasonable care while supervising and caring for the children in their custody. If a child is injured while in your program, the parents might sue the center if they think the injury was the result of the negligence of you or center staff. Negligence is a legal term that means a person was under legal duty to act with reasonable care and did not act with such care. If you have general liability insurance, the insurance company will defend you if you are sued, and, if you are found responsible, pay the money judgment up to the limits of the policy.

There are many types of liability insurance policies available.

The Child Care Law Center is a non-profit organization dedicated to upgrading information available on legal issues in the child care field. For more information, contact: CCLC, 625 Market Street, Suite 815, San Francisco, CA 94105.

*Reprinted with permission by the Child Care Law Center

Comprehensive general liability insurance is the most complete form of liability insurance because it provides coverage not only for negligence which happens at the child care center, but also for negligence which occurs away from the child care center, such as on a walk, a field trip, or while the children are playing at the local playground.

A liability insurance policy will cover claims when the insurance company is reasonably convinced that you were negligent. Most general liability policies cover four types of costs:

- bodily injury, which includes physical injury, pain and suffering, sickness and death;
- damage to another's property, including both destruction and loss of use;
- immediate medical relief at the time of the accident;
- the legal cost of defending the center in a lawsuit if the injured party decides to sue (the insurance company will pay for your defense even if the suit is groundless or fraudulent).

Liability Insurance Limits

Although it is clear that a comprehensive general liability policy with the appropriate endorsements can protect a child care center in many situations in which liability may arise, there are certain situations which are not covered by a general liability insurance policy, and separate coverage is required.

- **Accidents where no one is at fault.** A child in your care trips and falls while climbing out of the sandbox and injures his arm. A general liability policy will provide coverage only if the insurer believes that the injury or property damage was due to your negligence. Thus, if a child, as in the above example, is injured while in your care through no fault of the center staff, the injured party will not automatically be paid by your liability policy.

For this reason, and because many injuries to children are not anyone's fault, an accident insurance policy is worthwhile to consider. An accident insurance policy generally covers medical expenses for any injury caused by a covered accident which occurs at the child care center or while on a field trip. Most accident insurance policies list types of accidents which would be covered by the policy. For instance, most accident policies do not cover an intentional or self-inflicted injury. Thus, it is important to read the coverage and exclusions of an accident policy carefully.

- **Transporting children.** General liability policies do not cover an injury which occurs while a child is riding in a car. If your program transports children by car, such as on field trips, adequate insurance coverage is essential. (See **Transportation Insurance** below.)

- **Physical or sexual abuse.** You cannot purchase insurance to cover the intentionally wrongful or criminal acts of you or your employees. Thus, general liability insurance will not provide coverage liability for damages resulting from physical or sexual abuse to a child in your care. (See Q and A box below.)

- **Damage to your property.** General liability insurance does not cover damage to your property, whether it is owned, rented, or leased. Property insurance is written on a separate policy.

Other Liability Insurance

In addition to comprehensive general liability, there are many other forms of liability insurance which may be useful, depending on your particular needs.

- **Personal injury.** While a general liability policy covers claims relating to bodily injury and property damage, personal injury liability coverage provides protection for a libel, slander, or an invasion of privacy lawsuit, where injury is to a person's feelings or reputation. In a child care setting, this kind of claim may arise if a child care worker is involved in a disputed child custody case or reports suspected child abuse (in some states, however, child care workers are legally required to report suspected child abuse, and immune from civil or criminal liability if such a report is made). Personal injury cases brought against you by employees or former employees are not covered under standard general liability policies, but can be included for an additional fee.

- **Products liability.** The tuna which was served to the children for lunch had been inadvertently left out overnight, and one of the children gets sick as a result of eating the sandwich. Products liability insurance will protect you if you serve food or have fundraising activities, such as bake sales, and someone is injured by the food. The premium for coverage of a bake sale is usually based on gross receipts, and if there are no sales, a minimum premium is charged.

- **Owners' and tenants' liability coverage.** This is a very limited type of coverage which will cover any claims which arise from the child care operation on the premises listed on the policy. This type of policy would be useful only if your activities are specifically confined to the premises listed on the policy, i.e. you could use this coverage only if you never leave the premises with the children. The premium would most likely be based on the number of children in the child care program.

- **Contractual liability.** Almost all general liability policies exclude coverage for liability assumed under a written or oral contract. Thus, if a child care center enters into a contract with a funding source, and the contract includes a provision where the center assumes the legal liability of the other party for any damages that may arise under the contract, it would be advisable to purchase contractual liability coverage. Similarly, if a landlord inserts a hold harmless clause in a written lease agreement (where you agree not to sue the landlord if an injury occurs on the premises), since the lease is a contract, a contractual liability policy should be purchased to cover the

liability which you assumed under the lease.

Contractual liability insurance can be purchased either on a specific contract basis or on a blanket basis, which would cover all contracts made by the child care center where liability was assumed. A specific contract policy is cheaper and probably more suited to the needs of a child care center.

• **Fire legal liability.** A general liability policy will not pay for damage to anything that is in your care, custody, or control, and, therefore, would not pay for any damage which occurs to the portion of the building which you occupy. Therefore, if you rent or lease the building in which you operate your child care center, it is advisable to purchase some form of fire liability insurance. Although your landlord may have fire insurance, if *you* cause a fire on the premises, your landlord's insurance company will pay your landlord's claim and then attempt to collect the cost of repair to the building from you. Fire liability insurance will pay for damage sustained to the actual building if the fire was the result of your negligence.

The amount of a fire legal liability policy should be enough to completely restore the portion of the building that you are occupying in the event of a total loss. The premium is generally lower than what the building owners would pay.

• **Employee liability.** A child care center employee supervising children outside fails to notice that a toddler has wandered out of the yard. The toddler is badly scratched by a cat in a neighbor's yard and the employee is sued for negligence. Comprehensive general liability policies do not generally protect child care center employees if they are sued individually for negligence. Employees, however, can be added as additional insureds on the general liability policy. The insurance will cover employees only while they are acting within the scope of their duties for the child care center.

• **Directors' and officers' liability.** If a child care center is organized as a profit or non-profit corporation, the directors and the officers of the corporation can be individually sued. A general liability policy will protect board members and officers where the *corporation* is charged with negligence of the employees, but not if the board member or officers are separately sued for failing to make a prudent decision.

Directors and officers of a corporation are required to perform their duties in accordance with established legal standards. Since these standards vary considerably from state to state, directors should review the specific laws of their own state. In California, for example, a director must act (1) in good faith; (2) in a manner the director believes to be in the best interest of the corporation; and (3) with such care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances. Thus, if the board of directors decides not to repair broken equipment for financial reasons, and a child is injured by the equipment, the board of directors could be individually sued for failing to make a prudent decision.

A non-profit corporation can protect its directors from liability in the event of a lawsuit by indemnifying the directors in the corporate bylaws. A typical indemnification clause would read:

"This corporation shall, to the maximum extent permitted by law, indemnify each of its present or former directors, officers, employees, or other agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of this corporation."

In California, such a clause only provides protection when the director or officer was acting in good faith and in a way reasonably believed to be in the best interest of the corporation. The effectiveness of an indemnity provision will depend on the ability of the corporation to pay for the expenses incurred by the director in defending the suit.

An errors and omissions liability policy will protect board members and officers if they are individually sued. This type of policy has two different provisions—expense reimbursement and directors' liability. If there is an indemnification provision in the bylaws, the errors and omissions policy would reimburse the corporation for the amount it had to pay the directors or officers under the indemnification agreement. If there is no indemnification provision in the bylaws, the errors and omissions policy directly insures the board members, and the corporation is not involved in defense or payment.

• **Broad form comprehensive general liability endorsement.** A broad form comprehensive general liability endorsement can add personal injury, contractual, and a small amount of fire legal liability to your comprehensive general liability policy. Although it is usually cheaper to purchase this endorsement, the provisions and coverage provided by a broad form comprehensive general liability endorsement should be read carefully to make sure that proper coverage and appropriate amounts are included.

• **Excess liability coverage.** This coverage provides excess amounts of coverage above the amounts of the basic general liability insurance policy. For example, if you purchase a $100,000 comprehensive general liability policy from Company A, you could buy an excess policy from Company B. It would provide another $400,000 coverage. The combined total coverage would be $500,000. The second policy would provide extra liability coverage only after the basic policy paid on the claim to its limits. If the primary coverage is adequate, then the excess liability coverage may be relatively inexpensive.

• **Additional insureds.** Frequently, funding sources as well as landlords will require that they be named on your insurance policy as additional insureds. This means that if they are named as co-defendants in a suit

against you, the insurance would cover both the cost of their defense and any part of the settlement or judgment against them. The cost of naming an additional insured is typically minimal and is sometimes free of charge.

Transportation Insurance

If your child care center owns or leases any vehicles, automobile insurance is necessary. Bodily injury, property damage, and uninsured motorist protection are mandatory coverages included in an automobile insurance policy:

- **Bodily injury and property damage.** This coverage will pay for any bodily injury or property damage that must be paid as a result of an accident caused by you.

- **Uninsured motorist protection.** This coverage allows the occupants of the insured vehicle to collect from their own insurance company for bodily injuries which are caused by an accident with an uninsured motorist or a hit-and- run driver.

Other optional forms of coverage you may purchase include:

- **Medical payments.** This is a no-fault type of coverage which provides protection for injuries to passengers while riding in a vehicle owned and insured by you.

- **Comprehensive coverage.** This coverage provides protection for physical damage sustained by an insured vehicle, such as vandalism, fire, broken windshields, etc. It will not cover losses caused by collision.

- **Collision.** This coverage provides protection for damage to the insured vehicle when involved in an accident with another car or object.

- **Underinsured motorist coverage.** If you are involved in an accident with someone whose liability insurance does not fully cover the injuries sustained by you or your passengers, you can collect from your insurance company.

How much automobile insurance coverage do you need? Some experts suggest a $300,000 minimum for bodily injury and property damage coverage. A child care center which regularly transports children, however, may want to substantially increase its coverage to protect itself in case of a serious accident. Coverage can be significantly increased without incurring a proportional increase in premiums. For example, $1,000,000 worth of coverage generally costs only about 25 percent more than $300,000 worth of coverage.

If employees' or parents' vehicles are used to transport children, the child care center should still protect itself. Although the non-center owned vehicles are presumably insured by their owner, it is still important for the child care center to make sure that it is adequately covered in the event of a serious accident because it is highly likely that the center itself will be named as a defendant along with the driver.

It is important to note that the car owner's insurance will not cover any liability which could be attributed to the center's negligence. For example, if the accident occurred because the driver was distracted because there were too many children in the car, or there was a lack of adequate supervision, the car owner's insurance will not cover the legal fees of the child care center if the center is named as a co-defendant in a lawsuit.

There are, however, a number of ways a child care center can protect itself when using non-center owned vehicles:

- **Driver requirements.** The center should make sure that the parent, staff, or volunteer is a safe driver and does not have a history of traffic violations. Any car used to transport children should be covered by insurance, preferably at limits significantly beyond minimums many people carry. To make sure the car is insured, you could ask the owner for either a photocopy or a certificate of insurance from the insurance company. To make certain the limits are sufficient, the center might require the driver to increase the limits. Alternatively, if the program is non-profit, it might consider purchasing social service excess liability coverage, described below.

- **Employer's non-owned auto insurance.** An employer can be held liable for the actions of an employee or volunteer while that employee or volunteer is on business for the employer. This coverage will protect the center itself if it is named in a lawsuit arising out of the use of a vehicle owned by an employee or volunteer. If your center regularly uses staff or volunteers to transport children on field trips, this coverage should be considered.

- **Volunteers' excess liability insurance or social service excess auto coverage.** This coverage is available in some states to non-profit organizations which use volunteers and employees as drivers. This coverage will automatically extend the automobile liability insurance of the child care center to protect volunteers and employees when their own cars are used to transport children. It is important to note, however, that this policy only provides coverage over and above the individual's own policy.

- **Hired auto liability.** This coverage is sold as an add-on to the center's general liability policy and provides excess liability above the amount of insurance available from the rental company. This coverage, however, is limited to short-term rental vehicles, and thus is only useful to programs which use rental vehicles to transport children and staff.

How Much Is Enough?

People in insurance recommend a minimum of $500,000 in bodily injury and property damage, but the appropriate amount of coverage will depend on how many children are in your care. Liability insurance is written on either a split limit basis or a single limit basis. In a split limit policy which provides $500,000 bodily injury per person and $1,000,000 bodily injury per occurrence, $500,000 could be paid for

any one person injured and $1,000,000 would be paid for two or more persons injured. For example, if the play structure at your center collapsed, protection for bodily injury would be up to $1,000,000 for all persons injured, but no more than $500,000 for any one person. A combined single limit policy will provide protection up to the limit of the policy for any person or up to the limit for a combination of bodily injury and property damage.

Understanding Your Policy: "Claims Made" vs. "Occurrence"

Most general liability policies are *occurrence* policies which means that as long as the policy is in effect at the time of the accident, the policy will provide coverage regardless of when you are sued or whether or not you are still insured with the company. A *claims made* policy requires that the policy be in effect when the accident occurs *and* when the suit is brought against you. Since the long-term effects of an injury may not always be immediately known, it is important to determine whether your policy is *claims made* or *occurrence*.

It is important to read your insurance policy carefully to make sure that all of the provisions are clearly understood. The declaration page should indicate that comprehensive general liability is included. It is also important to note any exclusions in the policy and additional liability coverage which is purchased. Products liability, for example, will be shown as an endorsement on the policy and will define the coverage provided by the endorsement.

There is currently some debate over whether child care services constitute *professional services* requiring a special type of insurance coverage called *professional liability insurance*. If a liability policy specifically excludes or includes coverage for professional services, you should find out whether the insurance policy defines child care as a *professional service* and discuss this with your agent or broker.

Q and A about Physical and Sexual Abuse Liability

Q: Is an employee of a child care center covered under the terms of a general liability policy if accused of physical or sexual abuse?

A: If the employee has been added to the liability policy as an additional insured, or you have a separate employees' liability policy, most liability insurance policies will defend the employee if a *civil suit* is brought against the employee. The insurance company, however, will only provide a legal defense until liability is clear and *will not* pay for any damages if the employee is found liable. If criminal charges are brought for physical or sexual abuse, the employee *will not* be provided with a defense to a criminal charge under a general liability policy.

Q: If an employee of a child care center is accused of physical or sexual abuse to a child in the center, would the child care center itself be covered by the general liability insurance policy if named as a defendant in a civil lawsuit?

A: Unfortunately, there is not a clear answer to this question because cases are currently being decided in this area. Coverage will depend not only on the specific terms of the policy, but also on the particular claim made in the lawsuit. For example, a general liability policy may provide coverage for a suit based on negligent supervision of the employee, but not for a suit based on negligent hiring. The best way for a child care center to protect itself is to discuss the terms of the liability policy with their insurance agent and ask the agent about coverage in this type of situation.

Q: Would directors and officers be covered if individually named in a lawsuit which is brought against an employee of a child care center for physical or sexual abuse?

A: As discussed earlier in this article, a director or officer of a corporation can be held liable for failing to make a prudent decision. The legal liability here would most likely be for negligent hiring if the board member or officer directly hired or approved the hiring of a child care employee accused of physical or sexual abuse. A directors' and officers' liability policy may provide coverage in this situation; but, again, the extent of the coverage varies, and so it is best to discuss this with your agent.

Liability policies can be purchased directly from an agent or broker, or through a child care association. Partly due to recent public attention to abuse in child care settings, some programs are having difficulty purchasing liability insurance at all.

If you are experiencing that problem, contact local, state, and national child care associations for information about group policies or names of insurance companies which are continuing to insure child care programs.

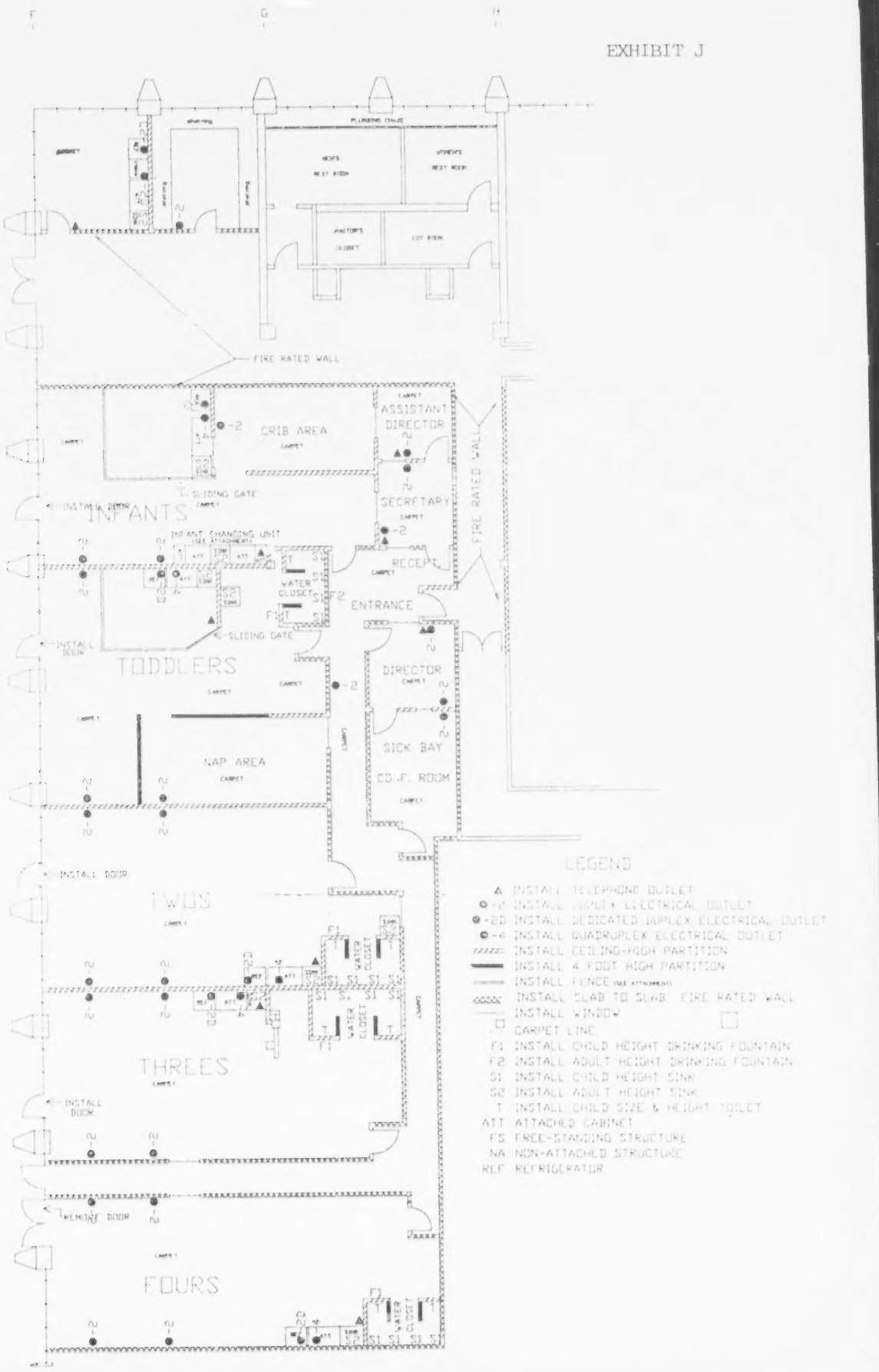
It is possible to insure yourself against almost any possible risk. However, no child care program can afford to go to such extremes. Therefore, it is important that you buy insurance only after a careful assessment of your program's specific needs and budgetary restraints.

References

Chapman, Terry S. et al. **Am I Covered for . . .? A Guide to Insurance for Non-Profits.** Society for Nonprofit Organizations, 6314 Odana Road, Suite 1, Madison, WI 53719 (176 pages, $10.50 prepaid).

Lane, Marc J. **Legal Handbook for Small Business.** AMACOM, 135 West 50th Street, New York, NY 10020 (181 pages, $14.95).

EXHIBIT J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FIRE RATED WALL
CRIB AREA
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SECRETARY
RECEPT.
FIRE RATED WALL
SLIDING GATE
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INFANT CHANGING UNIT
WATER CLOSET
ENTRANCE
SLIDING GATE
TODDLERS
DIRECTOR
NAP AREA
SICK BAY
CD.F. ROOM
INSTALL DOOR
TWOS
THREES
INSTALL DOOR
REMOVE DOOR
FOURS
LEGEND
INSTALL TELEPHONE OUTLET
INSTALL DUPLEX ELECTRICAL OUTLET
INSTALL DEDICATED DUPLEX ELECTRICAL OUTLET
INSTALL QUADRUPLEX ELECTRICAL OUTLET
INSTALL CEILING-HIGH PARTITION
INSTALL 4 FOOT HIGH PARTITION
INSTALL FENCE
INSTALL SLAB TO SLAB FIRE RATED WALL
INSTALL WINDOW
CARPET LINE
F1 INSTALL CHILD HEIGHT DRINKING FOUNTAIN
F2 INSTALL ADULT HEIGHT DRINKING FOUNTAIN
S1 INSTALL CHILD HEIGHT SINK
S2 INSTALL ADULT HEIGHT SINK
T INSTALL CHILD SIZE & HEIGHT TOILET
ATT ATTACHED CABINET
FS FREE-STANDING STRUCTURE
NA NON-ATTACHED STRUCTURE
REF REFRIGERATOR

EXHIBIT K

SUBJECT: Physical Security of Child Care Centers

The Federal Protective Service (FPS) is happy to be working together with the planners of Child Care Centers occupying space in areas controlled by the General Services Administration.

The following recommendations are presented as basic crime prevention measures to be considered by the operators of child care centers in Federal buildings.

1. Upon request, FPS will conduct a Physical Security Survey of the area that will be used for the child care center. An evaluation will be made of the worthiness of locks, doors, layout, etc. and provide a written evaluation with recommendations.

2. The FPS Communications Center should be provided with the location of the Day Care Center along with the names of its officials and opening and closing times and the approximate number of children cared for. The FPS will include the Child Care Center in its area of patrol.

3. The Child Care Center should be contained in one contiguous area, rather than several separate areas This will provide for better control and stronger security.

4. The "Occupant Emergency Plan" developed for the building should provide also for the safety and welfare of the occupants of the Child Care Center. Special considerations should be given to evacuation and assembly routes to guard against children being trampled by evacuating adults or lost while mingling with adults in assembly areas.

5. A push button type "duress" alarm should be installed in the Child Care Center and remoted to the FPS Communications Center. This alarm could immediately signal FPS without having to dial or speak.

6. A non-coin operated telephone should be installed inside the center and available for employees to summon police, fire and medical assistance.

7. Bars and gates should be on the ground level windows to prevent unauthorized exit or entry during duty or non-duty hours.

8. The entrance to the facility should be locked at all times. A bell or buzzer should be installed to sound whenever the door is opened to alert employees that the door is not closed.

9. The entrance door should open into a foyer and not directly into the area where children are kept, thus preventing unauthorized persons from having direct access to children when they visit.

10. Visitors, other than parents picking up or delivering children, should not be allowed. "Aunt Janie", who works upstairs or around the corner, should not be permitted to visit a child in the child care center.

11. Tradesmen or repairmen should be identified prior to admittance and the purpose of their visit should be verified. They should be escorted while within the center and the children kept away from working areas.

12. Employees should receive crime prevention training offered by FPS. At least one of the employees should have the responsibility of "security officer" as part of their duties.

13. Outside play areas should be screened to prevent passersby from seeing talking or handing things to the children. A counselor should be in the play area at all times when children are present.

14. All employees should receive first aid training (including CPR) which can be provided by the FPS at no cost.

15. All employees should have a thorough background check by the police, especially to uncover prior or pending child related crimes.

16. Cash should not be kept in the facility. Payments should be made by check or money order.

17. Special provisions should be made for purse and valuables of the employees to prevent theft of their belongings by persons visiting the Child Care Center.

18. Parents using the Day Care Center should be advised of the security regulations and be required to obey them.

19. Parents should be advised to notify the center when custody or court proceedings affect a child. Any change in custody or guardianship should be communicated immediately to Day Care Center officials.

20. A complete record of personal history information should be kept on each child to include the following:

    a. Name in full
    b. Name child answers to
    c. Address, phone number and apartment number
    d. Name of custodial father
    e. Name of custodial mother
    f. Name of custodial guardian (if any)
    g. Name of other person authorized to pick up child
    h. Daytime telephone of parents and/or guardian
    i. Sex and date of birth
    j. Photograph of child (FPS will provide polaroid camera on free loan for this)

21. A head count of all children should be made several times each day. A written record of the name of each child attendance will be recorded upon arrival. This could be extremely useful should the building be suddenly evacuated and a verification is being made of who was present.

22. Provisions should be made to care for children who are not picked up at the end of the day.

Exhibit L

Items to be Included in a Standard Operating Budget

Start-Up Costs

1. Space
   a. Space acquisition
   b. Space renovation costs - GSA funded

2. Equipment
   a. Classroom equipment
   b. Outdoor play equipment
   c. Office equipment
   d. Kitchen equipment

3. Salaries/Contract Services
   a. Planning services
   b. Staff training
   c. Insurance
   d. Legal services

4. Working Capital (initial operating expenses)

Operating Costs

1. Staff

   a. Salaries

      -- Director
      -- Teachers
      -- Aides
      -- Clericals

   b. Benefits

      -- SS/WC/UCP
      -- Leave
      -- Health Insurance
      -- Retirement
      -- Unemployment

   c. Bonding

2. Insurance (fire, liability, accident)

3. Equipment

   a. Replacement/repairs

   b. Rental

4. Consumable Supplies

   a. Food and related supplies

   b. Teaching supplies

   c. Office supplies

   d. Postage

5. Transportation

6. Staff-development and Training

   a. In-service training

   b. Publication/books

   c. Attendance at conferences

   d. Special Consultants

7. Other Administrative Costs

   a. Legal Services

   b. Accounting

Income

Parent Fees
(Amount calculated as needed to cover operating costs with no profit - will vary according to geographic location and number of children enrolled.)

Fund raising/Donations

Grants

Subsidies

Operating Costs to be Provided by IRS

- SLUC for space used and utilities
- Telephone
- Maintenance
- Photocopying
- Administrative Oversight
- Legal Advice

EXHIBIT M

Charter for the IRS/NTEU Child Care Cooperative Effort

I. **PURPOSE:**

A. IRS and NTEU both recognize the importance of providing on-site, affordable child care for the employees of the Internal Revenue Service. The parties want to assure the successful implementation of child care centers wherever space permits and employees express an interest.

B. The IRS and NTEU agree that both National and local support is critical in order to attain this goal. The role of the IRS and NTEU National Offices is to take the following actions considered necessary to provide this support.

II. **NATIONAL LEVEL ACTIVITIES:**

To provide the necessary information to field offices, and to encourage, strengthen and expand joint child care facilities within the Service, the National parties will perform the following tasks. All decisions made regarding these activities will be made by consensus.

1. Establish guidelines for local child care center organization and distribute to the local center board of directors.

2. Establish a communication structure to ensure that both IRS and NTEU National Offices and all field office have necessary information on child care activities/developments in the Service. To this end, copies of all communications to the field by IRS will be shared with NTEU or will be sent out on joint letterhead, as appropriate.

3. Provide counseling and organize conferences as needed to educate sites implementing child care.

4. Share, and, when necessary, discuss status reports submitted to the National IRS Office by offices implementing child care prior to the opening date with National NTEU.

5. Share, and, when necessary, discuss monitoring reports on the quality of care provided at all opened centers with National NTEU.

6. Ensure that all field offices are complying with the principles of the cooperative venture and establishing centers as a joint venture by providing cooperative effort assistance when necessary. However, both IRS and NTEU recognize that local boards, once established, will operate with complete autonomy in all matters involving center administration.

7. Ensure that whenever the parties deem appropriate, publicity is handled jointly. This requires notice to both parties of all publicity efforts and when appropriate, joint statements, or joint appearances will be made.

8. Meet with field representatives as needed to ensure the vitality of the program and address issues of mutual concern.

III. LOCAL OFFICE ACTIVITIES:

1. All offices interested in establishing a child care center must involve the local NTEU Chapter in all survey, research or planning activities.

2. Once the local parties jointly decide to move forward with a center, the parties should consult the child care guidelines for direction/information on setting up a child care center.

3. Offices should establish a board of directors which should be made up of IRS employees and/or their spouses, one IRS management voting representative, and one NTEU voting representative. These boards will manage the administrative affairs and property of the corporation. They will provide assistance by making decisions regarding budget, staffing, policies, programs, fund raising, and other special activities.

4. Multi-agency child care boards should include at least one IRS and one NTEU member, whenever possible. Where the planned makeup of the Board does not allow for two Internal Revenue Service representatives, alternate means of assuring IRS and NTEU input into the child care operation should be explored. For example, an IRS/NTEU sub-committee could be established which would select the IRS member of the Board; IRS and NTEU could then alternate membership assignments. Other options should be explored as well.

Michael P. Dolan
Assistant Commissioner
Human Resources, Management and
Support, IRS

Robert M. Tobias
National President
NTEU

AAHPERD

AMERICAN ASSOCIATION FOR LEISURE AND RECREATION

EXHIBIT N

PARENTS' PLAYGROUND SAFETY CHECKLIST

Design Checklist

[ ] Check to see that there are no sharp edges, corners or projections on equipment.

[ ] Check to see that concrete footings are not exposed. Examine the area to insure that there is a safe, resilient surface under the equipment - such as sand, pea gravel or bark nuggets - to reduce the impact from a fall.

[ ] Playgrounds should be accessible to handicapped children - both up to and onto the equipment.

[ ] Playgrounds should provide equipment for a wide age-range of children, and should include sand play areas. There is a real lack of equipment for children 5-7 years of age, such as smaller swings and slides.

[ ] Swing seats should be made of soft material, not wood or metal.

[ ] A child should not be able to climb higher than 6-7 feet on the play equipment, such as to the top of a slide.

[ ] There should be no open holes on equipment where fingers and other body parts could get caught - especially openings 5-7 inches, which can trap a child's head. In addition, the rotation post on rotating equipment, such as merry-go-rounds, should not be open where a child could get a leg or arm caught within the rotating equipment.

[ ] Distance from the bottom edge of rotating equipment should not be more than six inches from the ground.

[ ] Polyethylene slides are preferred to stainless steel slides.

[ ] Slide incline should not exceed 30 degrees.

Parents' Playground Safety Checklist

Inspection Checklist

[ ] Check to see that equipment is not broken or damaged.

[ ] 'S' hooks on swings must be closed.

[ ] The area should be free of grafitti, litter, broken glass, electrical hazards and sanitary hazards.

The Parents' Playground Safety Checklist was taken from the AALR publication, Play Spaces for Children, Volume II: A New Beginning. Additional publications available from AALR include Where Our Children Play, Volume II: Elementary School Playground Equipment and Play for All Guidelines: Planning, Design and Management of Outdoor Play Settings for All Children.

AMERICAN ASSOCIATION FOR LEISURE AND RECREATION

DAILY PLAYGROUND INSPECTION CHECKLIST

On a daily basis, walk through the play area with a general alertness to the condition of the environment. Pay particular attention to:

Surfacing

[ ] Remove foreign objects from the loose safety material surface.

[ ] Rake loose surface materials to prevent compaction and to maintain correct depths of surfacing under vital parts of the structure.

Play Patterns

[ ] Watch children at play to insure that the equipment is not generating play patterns considered to be unsafe.

Vandalism

[ ] Look for signs of vandalism and report them for correction.

Critical Equipment Points

[ ] Carefully inspect all moving equipment (i.e. swings and spinners) for damage and wear.

The Daily Playground Inspection Checklist was taken from the AALR publication, Play Spaces for Children, Volume II: A New Beginning. Additional publications available from AALR include Where Our Children Play, Volume II: Elementary School Playground Equipment and Play for All Guidelines: Planning, Design and Management of Outdoor Play Settings for All Children.

AMERICAN ASSOCIATION FOR LEISURE AND RECREATION

DESIGN CHECKLIST FOR SCHOOLYARD PLAYGROUNDS

Safety Surfacing

Loose Material - organic and inorganic

[ ] A minimum of eight inches of safety surface must be available under all structures.

[ ] Impact zones under swings and the slide exit chute should be 24 inches in depth.

[ ] Inorganic materials selected for use must be round.

[ ] Inorganic materials selected for use must be between the sizes of 1/32" and 1/4" in diameter.

Rubber Material

[ ] Specifications for fall absorbing qualities of rubber mat must meet the CPSC required 200g impact attenuation guideline for the height of the specific play structure.

e.g. 1 inch mat - 48 inches in height (total height - not deck)
2 inch mat - 64 inches in height
3 inch mat - 120 inches in height

[ ] Chopped tire safety surface must be 4" or greater in depth.

Drainage

[ ] Provision must be made for quick removal of water - French drains are one system which should be considered.

Layout

[ ] Fall zones which surround traditional equipment must be free of obstacles.

[ ] Player traffic routes in the use zones must be large enough to provide multi-directional movement.

[ ] Natural sight lines must remain open so that the playground may be monitored.

Design Checklist for Schoolyard Playgrounds

Entrapment

[ ] Five to seven inch openings must be removed or filled to prevent head entrapment.

[ ] "V" shaped intersections between parts of the equipment, which are (1) 55° or less, (2) 10° above horizontal and (3) more than 24" above the ground must be removed or filled to prevent entrapment.

[ ] All parts of the playground including connecting hardware and hand holds must not be capable of entangling clothing. This includes pipe extensions used for hand holds.

Corners, Edges and Protrusions

[ ] The edges and corners of all objects in the environment must be radiused (rounded).

[ ] All sharp edges within the environment must be eliminated.

[ ] All pipe ends must be capped.

[ ] All protrusions from connecting hardware must have a permanently affixed protective covering.

[ ] All protrusions, even if covered, must not extend greater than the diameter of the object.

Specific Pieces of Equipment

Slides

[ ] High density polyethylene slides are preferred over stainless steel slides.

[ ] Stainless steel slides must face north away from the angle of direct sunlight.

Design Checklist for Schoolyard Playgrounds

[ ] Fiberglass slides are not a good choice since they are easy to vandalize and they splinter under sever stress.

[ ] Slide chute run-out or deceleration area must be within 0° to 4° of horizontal and at least 16 inches long.

[ ] Total slide incline must not exceed 30°.

[ ] Slide height must not exceed 80" in elevation from the ground. Slides mounted in the side of hillsides may be of any length as long as the total fall distance from the slide surface to the ground does not exceed 80" at any point.

[ ] Slides designed with a wheelchair dismount are preferred.

[ ] Slides designed with an access ramp parallel to the slide chute are preferred.

Swings - Standard

[ ] 'S' hooks must be closed.

[ ] The distance between seats and stationary supports or other seats must be at least 18 inches.

[ ] Seats must be slash proof.

[ ] Suspended masses, such as animals, must not be used unless documentation is provided which establishes that they pass the USCPSC 200g impact test.

[ ] Swings with seats designed for proper positioning and support are preferred.

Swings - Tire

[ ] Support beams must be two times the swing height plus 48 inches.

[ ] Ball joint bearings must have at least 170 degrees of swing.

[ ] Universal joint bearings must be covered with a durable, flexible shield.

Design Checklist for Schoolyard Playgrounds

Climbers

[ ] Climbers should be of the "fall free" design, i.e., arches and domes, which do not present obstacles on which to fall as do the 'cube' and most theme type of climbers.

[ ] Climbers are the most frequent source of entrapment and must be carefully examined for this problem.

[ ] Link climbers to other structures to generate additional activity and reduce "king-of-the-mountain" games.

Flexible climbers (i.e. rope and chain net) offer the highest motor challenge and greatest popularity with children.

Balance Equipment

Balance activities have been identified as having significant value.

[ ] Soft balance activities (i.e. rope and chain nets) have the greatest value and appeal.

[ ] Suspended balance activities place large stress forces on play structures. Check to insure that designs are able to accomodate such loads.

[ ] Suspended balance activity equipment must be frequently inspected for wear at the connection points.

[ ] Stability and traction surfaces on balance equipment must be included as a part of the design.

Upper Body Development Equipment

[ ] Check to insure that play structure linkage does not provide ready access to the top of upper body play events.

[ ] To develop skill and upper shoulder girdle fitness, each playground should have several upper body play events at various levels of challenge. Listed by degrees of least to most difficult, upper body development equipment includes: turning bars, chinning bars, parallel bars, horizontal ladders, track rides and ring treks.

[ ] Linking and/or grouping upper body events improves their utilization.

Design Checklist for Schoolyard Playgrounds

Equipment to Support Locomotor Development

[ ] Walking [ ] Running [ ] Jumping

[ ] Hopping [ ] Galloping [ ] Leaping

[ ] Skipping [ ] Sliding

Equipment to Support Non-Locomotor Development

[ ] Pushing [ ] Pulling [ ] Swinging

[ ] Swaying [ ] Lifting [ ] Carrying

[ ] Bending [ ] Stretching

Equipment to Support Manipulative Actions

[ ] Kicking [ ] Striking [ ] Catching

[ ] Throwing

Equipment Which Supports the Following Uses

[ ] Level changes in the body

[ ] Level changes in distance off the ground

[ ] Options for and uses of six directions: up, down, forward, backward, left and right

[ ] Options and choices are provided for the selection of at least two pathways to each event.

Spinners or Merry-Go-Rounds

[ ] In general, spinners are not recommended for school settings unless they are 4 feet or less in diameter and are equipped with speed governors.

[ ] Spinners must have rails which fully enclose the platform.

[ ] The distance from the bottom edge of the platform and the fall surface should not exceed 6 inches.

Design Checklist for Schoolyard Playgrounds

[ ] All protrusions or projections must be eliminated from any spinning equipment.

[ ] The "running track" zone around spinners which players use to push the spinners tends to become worn and thus becomes a low spot on the playground. This zone should have double deep surfacing material and positive drainage.

[ ] Designs which provide access to and support for disabled users are preferred.

The Design Checklist for Schoolyard Playgrounds was taken from the AALR publication, Play Spaces for Children, Volume II: A New Beginning. Additional publicatons available from AALR include Where Our Children Play, Volume I: Elementary School Playground Equipment and Play for All Guidelines: Planning, Design and Management of Outdoor Play Settings for All Children.